LAW LIBRARY JOURNAL

VOLUME 35 MARCH, 1942 NUMBER 2

Published bi-monthly by the
American Association of Law Libraries
Publication Offices: 42 West 44th Street, New York, N. Y.

AMERICAN ASSOCIATION OF LAW LIBRARIES

CONTENTS

Contents of the LAW LIBRARY JOURNAL are indexed in the INDEX TO LEGAL PERIODICALS
Subscription price of the LAW LIBRARY JOURNAL—$4.00 a year.

Printed by the Appeal Printing Company, 130 Cedar Street, New York City.
Entered as second-class matter February 7, 1942, at the Post Office, at New York, N. Y., under the Act of March 3, 1879.

LAW LIBRARY JOURNAL

VOLUME 35 MARCH, 1942 NUMBER 2

THE DUKE UNIVERSITY LAW LIBRARY

An Account of Its Development

BY WILLIAM R. ROALFE

I. INTRODUCTION

As there is very little specific information about particular law libraries available in print, comparisons between libraries can usually be made only by those who have been fortunate enough to visit other libraries under such circumstances as permit a more or less detailed study of their quarters, equipment and methods. This article is, therefore, intended to serve not only as a brief account of the development of the Duke University Law Library but also as a medium for the discussion of certain aspects of its administration that may perhaps be of interest to other law librarians, not because the decisions reached and the methods employed should be adopted elsewhere but because it is believed that sounder decisions may be made after various alternatives have been considered. At any rate, it contains information for which law librarians have repeatedly asked—information which usually could be supplied only with a good deal of effort and never in such detail. An appendix containing statistical information in summarized form will be found at the end.

II. EARLY DEVELOPMENT

While the history of the Law Library as an independent library is a brief one, beginning as it does in August, 1930, the collection of books has as a matter of fact been developed over a much longer period of time and, accordingly, a brief sketch of these earlier beginnings should be of interest. Although it is impossible to state at precisely what date a separate collection of law books was commenced, for professional training in law was offered as early as 1868, the fact that the present Law School was founded in 1904[1] may be taken as an indication that at least by that time some definite provision was made to supply books for the study of the law, and at any rate it was not long thereafter that three rooms in the General Library were set aside for the use of law students. Such law books as the Library possessed were kept in these rooms and as the collection grew, the necessary shelving was added. By the year 1908 this collection was regarded as of sufficient importance to justify the printing of a "Catalogue of the Law Library of Trinity College," a slender booklet containing 14 pages and listing the books under the traditional legal headings. That growth continued to be very gradual is indicated by the fact that the total holdings were

[1] For a brief history of the Law School see ALUMNI DIRECTORY, DUKE UNIVERSITY SCHOOL OF LAW, 1935. pp. xi-xiii.

reported as 2,600 in 1912; 2,781 in 1923; and only 4,000 in 1927.[2]

However, the following year was to witness a significant change for in the spring of 1928, Professor Bryan Bolich, a member of the Law School faculty, demonstrated his intense interest in the collection by assuming the arduous responsibility of systematically developing the Library, while at the same time continuing to carry his regular assignment of duties as a full time member of the teaching staff. Due almost entirely to his efforts, more than 7,000 volumes were selected and acquired in a little over two years and when he passed the responsibility on to the present librarian in July, 1930, there were 11,141 bound volumes ready to be moved into the new Law School building upon its completion.

Due credit should of course also be given to a number of other persons who played important parts in this early development of the legal collection. Mr. Joseph P. Breedlove, the Librarian of Trinity College and then of Duke University, together with the members of his staff, carried the entire responsibility for the accessioning and cataloging of the books, for binding when required, and supplied the necessary reference service. From 1928 until the law books were moved to the Law School building in 1930, Miss Marianna Long had charge of the room in which the legal collection was housed and she cataloged every legal item as it came in. In this manner she developed a detailed knowledge of the collection that made her a very useful member of the staff, not only at that time, but subsequently when she became a member of the Law School Library staff. Dr. William K. Boyd, Director of Libraries from 1930 to 1934, was also greatly interested in the growth of the legal collection not only before it was transferred to the Law School but afterwards as well and a substantial number of valuable and sometimes rare items have found their way into the Law Library, either through his personal selection or because of his encouragement of others.

[2] See 5 LAW LIBRARY JOURNAL 35 (1912) and list of law libraries in STANDARD LEGAL DIRECTORY (1923). There were 4,000 volumes in the collection when Professor Bolich began to develop the collection as indicated in the next paragraph.

III. A DECADE OF GROWTH

1. *The Problem in General*

From the foregoing remarks it will be perfectly clear that those responsible for the development of the library service when the Law School opened its doors in the new building in September, 1930, did not have to start at the very beginning. As a matter of fact 12,156 volumes, a collection well above the minimum required by the Association of American Law Schools, was moved into the Law Library on August 20th. During the summer months the full time staff had been increased from one full time staff member (in charge of the legal collection in the General Library) to three, namely, a librarian, a cataloger and a secretary. The new library quarters were adequate for immediate needs and the requisite equipment—chairs, tables, shelving, etc., were at hand.

But nothing could be further from the truth than the conclusion that, because of these facts, there was no real library problem, for a fundamental change in both the methods of teaching and the objectives of the Law School had taken place between the academic years 1929-

30 and 1930-31. A school which had been training men almost exclusively for practice in North Carolina now planned to draw its students from all parts of the country and expected them to return to their own states to practice. The faculty was substantially increased and some of the new members required highly specialized classes of library materials. A number of new courses were added at once and others were planned for the future. In addition, arrangements were being made to open a legal aid clinic at the beginning of the following year.

That this sudden change in the Law School program raised an acute library problem should be perfectly clear to all, for while the teaching staff can be substantially increased by adding the required number of persons, each of whom is qualified to teach certain courses, a library such as they will need cannot be developed in any such sudden manner, even if unlimited funds are available. The books must be selected with care and for the particular purpose in hand and unfortunately many of them cannot be acquired at will but must first be located and may then be ordered only if available at reasonable prices. And, as every librarian knows, this is only the beginning, for they must be ordered, received, accessioned, cataloged and shelved. In short, it is a far cry from a book selected and the same book finally ready for use by the public.

2. *Books and More Books*

For these reasons the rate at which any library develops in usefulness is, in the long run, to a large extent determined by the adequacy of the staff, and it may seem as if this aspect of our problem should receive first consideration. However, we will in this case address our immediate attention to the collection, primarily because one of the first decisions made by the staff was that of not restricting the acquisition of books to the capacity of the existing staff to handle them as received. Because of budgetary limitations affecting salaries and the difficulty of finding suitably trained persons, it was perfectly apparent that it would be necessary to enlarge the staff gradually rather than at once. To have restricted the acquisition of books accordingly would have postponed the receipt of some important books indefinitely and many scarce out of print volumes in the interval would have at least increased in value and might have become unavailable.

But in order to take full advantage of the policy based upon this decision, it was also decided temporarily to adopt two short cuts. First, any urgently needed book was put to use without cataloging and as soon as a temporary record was made and, second, many long sets, notably court and departmental reports, and even several entire groups of infrequently used volumes, were placed in the regular collection immediately without waiting until they were cataloged. While these decisions cleared the way for a rapid program of expansion, it was obviously still necessary to adopt some policy regarding the order in which books should be acquired for they could not all be procured at once. In spite of the fact that the major emphasis necessarily had to be placed upon the acquisition of books required for immediate use, it was decided that the long range objectives of the School

should receive due consideration from the very beginning. Consequently, a reasonable amount of time and money were devoted to the acquisition of early and out of print books, whether the need for them was urgent or not, provided they should be an integral part of the collection of the future.

Although this initial effort was not confined within definite limits, the major emphasis was upon court reports, statutes, bar association reports, attorney general reports and opinions, serials and non-serials in the fields of criminal law and criminology, and pamphlets concerning every legal and near-legal subject. In all of these classes the materials were collected for all states. The responsibility for the development of a comprehensive pamphlet collection was assumed both because it is so frequently neglected and because there was no comprehensive collection in the South Atlantic States.

A word should also be said about the collection of continental legal materials. A special appropriation of $5,000.00 was obtained in 1930 for the purpose of making a beginning and this fund (supplemented by drawing upon the general book fund) was used to advantage in securing some of the more important volumes and sets in French, German, Spanish and Italian law. While funds to develop this collection as rapidly as would be desirable have not been available, it has not been altogether neglected. Growth has for the most part been in response to the immediate needs of members of the Law School faculty or in order to supplement the foreign collection in the General Library.

So much for the fields covered. While the size of a collection and its rate of growth are only two among a number of criteria which should be considered in any attempt to evaluate it, they are quite correctly always of interest to the librarian. As has already been stated, the fiscal year 1930-31 commenced with a collection of 12,156 bound volumes. To this 21,287 volumes were added during the first year (1930-31) and 9,861 during the second (1931-32) thus bringing the total holdings to 43,304 bound volumes on June 30, 1932. Although the rate of growth declined to 3,596 volumes in the following year and has continued at approximately this rate, the decade from 1930 to 1940 witnessed a fivefold increase or a growth from 12,156 to 65,158 bound volumes.

A few comparisons with the collections of other law school libraries should also be of interest. In 1930 the Duke collection was the 40th law school collection in the United States in point of size. By 1932 it had advanced to 20th place in the nation and had assumed the lead in the entire south, a position it has since maintained. Its relative rank has continued to improve, although at a continuously decreasing rate, until today the Duke collection is the 13th in size. Further advances, comparatively speaking, are not as likely to occur because the Library has now definitely taken its place among those law school libraries that are being systematically developed.

It remains but to make a few general remarks about the collection. In the first place, utility, either present or future, has at all times been the primary objective and rare books have for the most part been acquired only because they filled important gaps. This policy

has been consistently pursued not because of any belief that the acquisition of rare but little used classics is not a legitimate objective but because of the conviction that a young library with an inadequate collection must for the time being forego such luxuries. By adhering to this policy great progress has been made in building up a useful working collection. Many entire special collections are complete, others contain only such gaps as can be filled without undue delay. Unfortunately, however, in some instances the cost of needed items is prohibitive and others are not available at any price. Where there is no other practical procedure, microfilm and other methods of photo-reproduction, already employed on a modest scale, will no doubt be used to full advantage.

3. *The Staff*

After this brief digression we may now return to the staff. Obviously, the one person who had charge of the legal collection while it was a part of the General Library would no longer suffice, for the Law Library staff was confronted not only with the necessity of taking over all routine work formerly done in the General Library, it also had to prepare itself to serve an enlarged Law School faculty and student body as well as to meet a greater demand for legal materials from other departments of the expanding University. In addition, it had to carry forward the development of the collection at a greatly accelerated rate as already indicated. Lack of funds for this purpose prevented as rapid an increase in the staff as would have been desirable. However, the original staff of one was increased to three in July, 1930: one librarian, one cataloger and one secretary. In October, a full time assistant, to take charge of the reader's service, was added and at the same time provision was made for seven student assistants, each to work for 15 hours per week during the academic year. At the beginning of the following summer permanent arrangements were also made for the employment of three student assistants to serve each year on a full time basis during the summer months of June, July and August.

As the work got under way, the most obvious inadequacy was in cataloging and a second cataloger was appointed in July, 1931, but it was not until July, 1937, that it was possible to satisfy another long felt need, the need for a sixth full time assistant to take over the book selection and order routine theretofore carried by the secretary assisted by other members of the staff.[3] This added expense was met in part by permanently reducing the number of student assistants to eight at the beginning of the next academic year. On three occasions extra full time help has been employed for limited periods of time. In addition, National Youth Administration assistance has been available during several academic years. Although the amount of such help has fluctuated from year to year and supervision has required a good deal of time on the part of the regular staff members, the benefit to the Library has in the aggregate been considerable.

[3] A full time staff of six has been continued to the present time. Present and past members of the staff in the order of their appointment are as follows: Marianna Long, since September 1928; William R. Roalfe, since July 1930; Mary S. Covington, since October 1930; Mrs. Francis E. Walker (formerly Annie Carpenter) from January 1931 to August 1941; Katharine B. Day, since July 1931; Mrs. Allston Stubbs (formerly Hazel Mangum) from July 1937 to August 1941; Natalie Hessee, since September 1941; Louise Bethea, since November 1941.

Before leaving this subject, it may be well to mention the relationship of the Library staff to the faculty because this relationship varies considerably in different schools. While control of the Library, like the rest of the Law School program, is vested in the faculty and the librarian is of course responsible to the dean as the head of the Law School, the Library staff is expected to carry on its administration, subject only to supervision as to matters of broad general policy, and, accordingly, the full authority to do so is delegated to it. Consequently, for all ordinary purposes the faculty acts through the librarian rather than through a library committee and all delays occasioned by the necessity of having to wait for the infrequent meetings of such a group are avoided. It follows that the faculty as a group ordinarily acts only when some matter is presented to it by the librarian, but it may and sometimes does act upon its own initiative.

However, it should not be concluded either that the faculty takes little interest in the Library or that it plays an unimportant role in its development for such is not the case. As individuals, faculty members are almost continuously of assistance. They are encouraged to offer suggestions with respect to any matter concerning the Library and its administration, and because of their specialized knowledge, they play a vital part in the process of book selection. It is because the Library staff is represented on the faculty and these informal avenues for collaboration are assiduously cultivated that the necessity for formal participation by the faculty as a body is so seldom necessary.

4. *Organization of Work*

A logical division of labor is sometimes more difficult to achieve with a small staff than with a large one because each member of a small staff may have to perform a diversity of duties. For this reason it was some time before the present division of duties was fully in effect. However, from the very beginning the responsibility for cataloging was delegated to one assistant and the supervision of the reader's service was very soon placed in the hands of another. To the head cataloger was also assigned full responsibility for the binding program. Thus, the librarian was freed from all but general responsibility in these three fields of activity and could devote most of his time to the supervision of the work incidental to the selection and acquisition of books and related materials. For several years the secretary carried on much of this routine work but under such an arrangement it was necessary to call upon other members of the staff for assistance. Eventually, in July, 1937, as has already been pointed out, a sixth full time staff member was added and it became possible for the first time to coordinate all of this routine work.

5. *Scope of the Service*

a. *In General*

The foregoing remarks about the organization of the staff should no doubt be supplemented by some indication of the scope of the service for no useful conclusions may be reached or helpful comparisons made in the absence of such information. In this respect law school libraries vary greatly. In some a "glorified janitor" to return the books to the

shelves and to straighten the tables and chairs appears to suffice. In others, supervision by a mere custodian with neither professional training nor an interest in the work is regarded as adequate. Perhaps such schools perform a useful service, but an effective use of library materials can hardly play an important part in their programs, and it may very well be a fact that, for their purposes, such libraries are adequate.

In other words, the question of adequacy can only be determined by taking into consideration, first, the extent to which the program of the particular law school (and the University of which it is a part) involves the use of law library materials and, second, the degree of success achieved by the library staff in supplying these needs. This is not the place to discuss the objectives of the Duke Law School and the methods by which it has sought to achieve them nor is this at all necessary. For our present purpose it is sufficient merely to state that the library has at all times been regarded as an indispensable factor in the Law School's program—so indispensable in fact that every effort has been made to create a library service adequate to meet every demand that may be placed upon it. So much for generalities. The following paragraphs are intended to indicate, in more or less detail, the manner in which the staff has sought to fulfill the obligation thus imposed upon it.

b. *Selection and Acquisition of Books*

For example, the responsibility for the selection of books and related materials has been taken seriously. In the first place, the staff endeavors to apprise itself of the existence of every book and pamphlet in any field of interest to the Law School, although this involves the systematic scanning and checking of a considerable number of sources of information. Titles that should obviously be acquired are secured at once, others as soon as sufficient information is at hand to make an intelligent determination possible, and every new title that may be of interest is kept on file until it has been definitely determined that it is not advisable to acquire it although in doubtful instances a decision may not be reached for a year or more. So far as possible the needs of readers are anticipated but the future as well as the present needs of the Law School and the University as a whole are kept constantly in mind. Consequently, careful consideration is given to titles that will probably go out of print, or that are not collected by law libraries generally, because one of the useful services that a research library may perform is that of preserving information that cannot be secured elsewhere, or at least in the section of the country in which it is located. Although the library staff assumes the primary responsibility for the selection of books, participation on the part of Law School faculty and staff members is encouraged both by the distribution of the list of "Current Legal Publications" through which they are informed about new books that may be of interest to them and by consulting with individuals with respect to publications in their respective fields.

c. *Cataloging, Binding and Classification*

And again, the arduous task of systematically arranging and cataloging the collection has not been neglected. A

program of full cataloging has been in effect from the beginning and this has included all pamphlets as well as books. The fact that a complete duplicate set of cards for all titles (except pamphlets and such documents as are also in the General Library) is prepared for the union catalog in the General Library, and an additional card for each title is prepared for the Duke University depository at the University of North Carolina, adds considerably to the work involved.

Although the value of cataloging is of course demonstrated on a small scale and in individual cases every day, one may, when considering the expense involved, still be inclined to doubt if there is after all an adequate return on the investment. However, in this Library the staff has had two opportunities to demonstrate its value on a larger scale. The first occurred when the collection of pamphlets was bound and cataloged and the second, when the collection of miscellaneous documents (hearings, reports, etc.) was similarly treated. In spite of the fact that in both instances these materials were temporarily arranged in pamphlet boxes under broad general headings, so that they were reasonably accessible, they were seldom used until they were brought to the specific attention of the reader under the appropriate headings in the catalog.

Adherence to the rule that if a title is worth keeping, it is worth cataloging, has been no stricter than to the rule that it is also worth binding. Every book received in poor condition is either repaired or rebound and all unbound materials are appropriately bound. But various reasonable economies are practiced. Little used materials are bound inexpensively and pamphlets of various classes are bound together in volumes of convenient size rather than separately, thus greatly reducing the expense. This, however, also achieves another purpose, for standard sized volumes are much less readily misplaced than pamphlets.

Obviously, the problem of classification presented itself at the outset, both because of the inescapable necessity of making some intelligent disposition of the volumes and because the adoption of a permanent scheme at the beginning might obviate the necessity of making a radical change in the future. However, as no thoroughly tested comprehensive classification for legal materials was available, if an immediate solution of this problem was to be undertaken, there appeared to be but two alternatives: first, the formulation of a classification scheme based upon such proposals as were already in print (either for the whole or for certain portions of the collection) or, second, the preparation of a substantially new classification, designed to meet the immediate and future needs of this particular Library. Both alternatives were rejected as impracticable because it was believed that no classification scheme could be adequately tested except by applying it to a large and diversified collection. In other words, there was too much danger that important decisions would be made, in the absence of sufficient opportunities for testing, with the result that at a later date the scheme adopted would prove to be impractical in important particulars. Consequently, the collection was and has continued to be arranged rather than classified in the strict sense but as far as possible the way has been kept clear for the adoption of a classification scheme either for the collection as a

whole or for certain classes of materials if this should prove to be desirable at some time in the future. Every effort has been made to avoid the making of irrevocable decisions that might later be regretted.

d. *Service to the Public*

Because of the relatively smaller student body the Library has been able to provide all students with greater latitude in the use of library materials than is sometimes the case. For example, every student has access to the entire collection both in the reading room and in the stacks (except the relatively small number of books on reserve) and may, as his knowledge of the collection grows, select his materials for himself or browse among the books at will. All students doing intensive pieces of research work are permitted to hold needed books at their carrells or tables until their work is complete, a privilege which is sometimes accorded only to a limited few, such as law review men. This library policy, supplemented by a teaching program which introduces every student to the Library through the course in Legal Bibliography[4] given in the first semester and emphasizes the use of books at many points thereafter, results in a rather heavy tax upon the Library on a per student basis but it is believed that this is fully justified by the results attained, namely, the graduation of men trained to make effective use of law books when they become members of the legal profession.

Service to Law School faculty and staff members involves the usual assistance in the locating and assembling of desired materials, in page service throughout the Law School building and in borrowing books from and returning them to the General Library. An additional service entailing a good deal of routine work, which faculty and staff members would not now dispense with, is the circulation of all current periodicals under a plan giving each Law School faculty and staff member 24 hours to scan the current numbers of all periodicals in which he expresses an interest, with the privilege of requesting the return of any number for further reading after it has circulated to the entire list. Obviously, a few of the outstanding periodicals circulate to all persons on the list while others go only to those interested in the special fields involved. Several faculty members, however, have broad and diversified interests and therefore, desire to see a considerable number.

Supplementing this service is the circulation of the list of "Current Legal Publications," until the year 1941-1942 included in the "Law School Bulletin", but now issued separately, intended both to keep faculty and staff members informed about new legal and near-legal publications in their several fields and to provide them with a regular opportunity to recommend books to be purchased by the Library. The circulation of this list and the current periodicals, has stimulated a broader participation in the process of book selection and has in turn increased the interest of those who participate in the development of the Library.

The issuing of the "Law School Bulletin," although not strictly a library

[4] This course places the emphasis upon practice in the use of the books themselves. From 1930 to 1940 the course was entitled "Legal Bibliography." During the year 1941-42 the same instruction was given in the first eight weeks of a two hour course, extending throughout the year, entitled "Legal Research and Writing."

function, has devolved upon the Library staff largely because it was preceded by the "Law Library Bulletin." When the contents of this original bulletin was broadened, a change in title became necessary but the responsibility for its preparation remained with the Library staff. As a matter of fact the Bulletin has always included news items about the Library and for a number of years the list of "Current Legal Publications" as well. It has, therefore, in spite of its broader objective, provided the Library with an appropriate medium for extending its own service.

An annual report by the librarian has also been employed to acquaint those interested in the Law School with the progress made during the year, with special collections or particular features of the Library service and with the problems with which it is confronted.[5] This report also serves as a medium for publicly expressing appreciation to those who have made gifts to the Library during the year and the reports taken together constitute a permanent record of its development. The annual reports, the "Law School Bulletin," and "Current Legal Publications" are sent to a number of law libraries at their request, and it is hoped that this wider distribution also serves a useful purpose.

Some mention should no doubt also be made of inquiries which come to the Library by mail, for although some of these are disposed of without much effort, others have required careful consideration and detailed replies. This has been especially true when such inquiries have come from other libraries for in such instances, the Library staff has never confined its service to the answering of simple reference questions but has endeavored to respond as fully as the situation appeared to require. Many of these inquiries have concerned problems in law library administration, and frequently information about the practice in this Library has been one of the objects of the inquiry.[6]

6. *Quarters, Furniture and Equipment.*

Most libraries outgrow the quarters provided for them, and many do so sooner than those who made the original plans expected. In this the Duke Law Library has not been an exception. While the seating capacity is still adequate and would permit some increase in the number of persons served, its growth during the first decade in the present building has demonstrated its inadequacy both as to work space for the staff and as to stack room for the collection. One of the important developments in the future should, therefore, be new and more adequate housing. When planning for this step, full advantage can be taken of the many recent developments in library construction.

The situation being such as has been indicated above, no useful purpose would be served by incorporating a detailed description of the present library quarters in this article and as the furniture and equipment are the same as one customarily finds in law libraries, there is

[5] These mimeographed reports have been issued since the year 1930-31. Briefer statements relating to the Law Library are also embodied in the reports of the University Libraries and the Dean of the School of Law which appear annually in the printed REPORT OF THE PRESIDENT AND REPORTS OF OTHER OFFICERS published by the University.

[6] Largely because the plan of the building makes any other arrangement impracticable, the Library performs two services not connected with its primary function. All mail for the Law School is received by the Library and is distributed throughout the building by its page service which at the same time assembles outgoing mail and deposits it in the Library where it is collected by the regular mail carrier. The Library also provides a limited amount of page service not related to its function as a Library.

also no justification for enlarging upon these matters. Both furniture and equipment have been made available as needed and accordingly the Library program has never been hampered in these respects.

7. *Cooperation with Other Libraries and With Professional Groups.*

Cooperation with other libraries and with professional groups has at all times been an integral part of the Library's program. Accordingly, this account would not be complete without some indication of the form this has taken, for the staff and its work have been vitally affected by the obligations thus assumed and by the benefits which have accrued from the relationships thus established. In the first place, cooperation with the General University Library has been continuous. This has concerned the acquisition of books, cataloging, reference work and has frequently involved the temporary transfer of books to the Library where they were urgently needed and should be placed on reserve. The task of developing an adequate collection for the Law School has of course been considerably simplified because of the proximity of the rapidly expanding and more comprehensive collection in the General Library, a collection which includes many useful and even indispensable volumes in the social sciences. Because of the daily messenger service between the libraries of Duke University and the University of North Carolina, the combined library resources of the two universities are readily available thus reducing to a minimum the need to call upon libraries outside of this area through inter-library loans. By way of reciprocation the Law Library has sent any book, regardless of its character, (unless actually in use) to the University of North Carolina. Requests from any other library are honored unless the book is in more or less constant use or could not readily be replaced if lost in transit.

But cooperation directly between libraries has long since been demonstrated as not enough and the growth of professional groups has developed in order to meet the need for more widespread collaboration. In this members of the staff have participated acting upon the belief that benefits flow in both directions. While this has involved participation in the activities of the American Bar Association, state bar associations, the American Library Association, and occasionally other professional groups, as would be expected, the major emphasis has been upon the programs of groups more directly concerned with law school libraries, namely, the American Association of Law Libraries, the Association of American Law Schools and the Carolina Law Library Association. In addition to frequent participation as officers and committee members, members of the staff have contributed articles, check lists and book reviews to legal and library periodicals.

While it is hoped that these efforts have contributed something of value to the programs of the several professional groups concerned, there can be no doubt about the fact that benefits have accrued to members of the staff and in turn to the Library. Such work has unquestionably enlarged the capacities of those who have participated and through them the Library has been kept in touch with developments in the several fields with which its service is concerned.

IV. The Library Today and Tomorrow

The foregoing remarks have appeared under the general heading "A Decade of Growth" because for most purposes it has been convenient to treat the period since the summer of 1930 as if it were a decade rather than a slightly longer period. However, there is one important matter to which attention should be called. Whereas the outstanding problems of the decade, that is now receding into the past, were no doubt those of developing a competent staff and assembling an adequate collection, the major problem with which the Library is confronted at the beginning of the second decade is that of housing. This is obviously a problem that cannot readily be solved in a period of emergency like the present one, but it is clear that when the opportunity offers, it should be possible to take advantage of the many recent developments in library construction. When that time comes the value of the unobtrusive work now being done will become far more apparent.

No doubt one of the outstanding characteristics of a growing library is the inadequacy of the collection in important particulars. The demands invariably outrun performance. Certainly a collection of 70,274 bound volumes and 7,639 pamphlets can hardly be regarded as a complete legal research collection however adequate it may be to meet many of the everyday demands that are placed upon it. Indeed, it is no more than a very good beginning, but after all, what is a decade in the life of a library. If past experience can be relied upon as a guide, the Library will continue to grow for it will receive the support of the Law School faculty and of the University Administration, a support which has consistently been characterized by the belief that the Law Library should be made as adequate as the University can afford to provide.

APPENDIX

Figures in the following tables are confined to the decade from July 1, 1930 to June 30, 1940, or to such years within this decade for which they are available. On February 20, 1942, the collection consisted of 70,274 bound volumes and 7,639 pamphlets.

I. Contents of Collection

Class	Number of Bound Volumes 1930	1940
Appeal Papers	*	923[1]
Association Proceedings		
Bar Associations	96	1,249[2]
All Others	*	422[3]
Attorney General Reports and Opinions	*	980[4]
Court Reports		
American		
Official	4,514	15,384

Class	Number of Bound Volumes 1930	1940
Unofficial	2,665	8,117
British Empire	610	2,829
Digests (American and English)	273	1,332
Encyclopedias (American and English)	171	754
Foreign Law	*	2,848
Pamphlets		
Documentary	*	496[5]
Non-Documentary	*	423[6]
Periodicals	594	5,253
Shepard's Citations	*	118
Statutes		
American	475	6,494
British Empire	*[7]	187
Texts and Treatises	565	10,004
Trials	*	135
In All Other Classes	2,193	7,210
Total Number of Volumes	12,156	65,158

* Figures are not available but the holdings were negligible.
[1] Consists of 555 volumes for the Supreme Court of North Carolina and 368 volumes for the U. S. Circuit Court for the Fourth Circuit.
[2] Consists of 1,609 separate numbers bound in 1,249 volumes.
[3] Consists of 662 separate numbers bound in 422 volumes.
[4] Consists of 993 books bound in 980 volumes.
[5] Consists of 2,250 titles bound in 496 volumes.
[6] Consists of 4,994 titles bound in 423 volumes.
[7] The General Library had a complete set of English statutes but these were not transferred to the Law Library along with the other legal materials.

II. Growth of Collection

a. *Bound Volumes*

	Aug. 1930	1930-31	1931-2	1932-3	1933-4	1934-5	1935-6	1936-7	1937-8	1938-9	1939-40
Number Added	12,156**	21,287	9,861	3,696	3,353	3,022	2,815	1,216	1,535	2,410	3,807
Total Number	12,156	33,443	43,304	47,000	50,353	53,375	56,190	57,406	58,941	61,351	65,158

** Number of volumes transferred to the Law Library when it was moved into the new Law School building.

b. *Pamphlets*†

	1934-5		1935-6		1936-7		1937-8		1938-9		1939-40	
	Titles	Bound Vols.	Titles	Vols.	Titles	Vols.	Titles	Vols.	Titles	Vols.	Titles	Vols.
Number Added	756	102	2,103	246	1,392	134	1,053	189	1,104	151	836	97
Total	756	102	2,859	348	4,251	482	5,304	671	6,408	822	7,244	919

† All pamplets are bound together in volumes of convenient size and are fully cataloged. Those repre-

sented in this table have been assigned to two sets entitled "Miscellaneous Documents" and "Pamphlets." The Library possesses many pamphlets that do not fall in either of these groups but these have not been counted because they were not finally arranged and cataloged prior to June 30, 1940. Most of these pamphlets will be classed in "Business Documents," "Miscellaneous Appeal Papers," "Theses" and "Trials." Pamphlets which form a part of a series or which are an integral part of a set, as for example, appeal papers for a court for which the Library maintains a complete file, are not counted.

III. Serials

	Currently Received	*Inactive*
Periodicals	321	325
Newspapers	7	6
All others	630	782
Total	958	1,113
Grand total		2,071

IV. Faculty Collection‡

Books	33
Articles	142
Reports	54
Miscellaneous	64
Book Reviews	68

‡ The faculty collection is composed of copies of contributions made by faculty members while they are members of the Duke Law School faculty. Book reviews which are available in the general collection are not duplicated, but all book reviews are listed.

V. Expenditures for Books and Binding

	1930-31	1931-2	1932-3	1933-4	1934-5	1935-6	1936-7	1937-8	1938-9	1939-40
Binding	***				894.95	2,064.70	994.21	1,124.75	1,479.55	1,759.29
Continuations	***				3,849.23	4,262.31	4,926.24	5,506.78	5,317.12	5,141.78
All Others	***				8,048.18	12,453.73	5,407.29	9,707.30	7,777.81	8,435.05
Total	15,000	63,578.24	11,881.52	9,526.67	12,792.36	18,780.74	11,327.74	16,338.83	14,574.48	15,336.12

Average Yearly Expenditure: $18,913.67 Total for the Decade: $189,136.70

*** The book fund was not broken down into separate funds for binding, continuations and other books until 1934-5.

b. *Cards Prepared*||

	1930-31	1931-2	1932-3	1933-4	1934-5	1935-6	1936-7	1937-8	1938-9	1939-40
Library of Congress	11,316	25,026	18,550	14,204	13,636	21,189	10,473	11,490	13,404	12,768
Typed	2,183	6,654	3,126	5,640	6,487	11,354	8,828	8,656	7,763	6,098
Total for Year	13,499	31,680	21,676	19,844	20,123	32,543	19,301	20,146	21,167	18,866
Total to Date		45,179	66,855	86,699	106,822	139,365	158,666	178,812	199,979	218,845

|| A duplicate set of cards, for all titles except pamphlets and such documents as are also in the General Library, is prepared for the union catalog in the General Library and one extra card for every title is prepared for the Duke University depository at the University of North Carolina.

VI. Cataloging

a. *Items Cataloged*

	1930-31	1931-2	1932-3	1933-4	1934-5	1935-6	1936-7	1937-8	1938-9	1939-40
New titles§	1,067	2,771	1,248	1,386	1,373	3,259	2,001	2,091	1,923	1,636
Continuations	8,803	5,193	3,413	2,753	2,846	2,502	2,155	2,678	2,899	2,551
Duplicates	138	3,265	217	259	283	272	224	241	257	220
Recataloged	0	0	0	62	114	49	42	66	36	36
Total for year	10,008	11,229	4,878	4,460	4,616	6,082	4,422	5,076	5,115	4,443
Total to date		21,237	26,115	30,575	35,191	41,273	45,695	50,771	55,886	60,329

§ Including pamphlets most of which are cataloged as fully as if they were books.

Notes Concerning A. A. L. L. Members

Arthur S. Beardsley, Law Librarian of the University of Washington, is the author of an interesting historical article entitled "Controversies Over the Location of the Seat of Government in Washington" which was published in the July and October, 1941 numbers of the *Pacific Northwest Quarterly* and is also available as a reprint.

William S. Johnston was re-elected Librarian of the Chicago Law Institute at the Annual Meeting of the Members of the Institute on January 31, 1942. Other Officers elected are: 1st Vice-President, Frank Smith Sims; 2nd Vice-President, Frederick Z. Marx; Treasurer, Roy C. Osgood; Secretary, Herbert C. DeYoung; and Members of Board of Managers: Charles C. Spencer, John D. Black, John E. MacLeish, Jacob G. Grossberg, Willard L. King, Robert F. Kolb, Paul M. Godehn, Louis P. Haller, Edward D. McDougal, Jr.

Matthew A. McKavitt, Director of Libraries of the Department of Justice, is lecturer in Legal Bibliography at the Columbus University Law School, Washington, D. C.

Dorothy Mitchell has succeeded Mrs. Herberta Leonardy as Librarian of the School of Law of the University of Miami, Coral Gables, Florida.

Ervin Pollack, formerly an assistant on the staff of the Columbia University Law Library, has been appointed Librarian of Hays, Podell & Shulman, 39 Broadway, New York City.

John T. Vance, Law Librarian of Congress, spoke on "Book Hunting South of the Border" at the dinner meeting of the Fifth Convention of the Inter-American Bibliographical and Library Association, held February 20th and 21st in Washington, D. C. Mr. Vance, who recently returned from Mexico, will soon leave the country again for an extended trip in South America.

RECENT DEVELOPMENTS IN FEDERAL TAXATION*

By Roswell Magill

Former Under Secretary of the Treasury

Few lawyers would question that the past decade has constituted a distinct era in federal taxation, as it has in other fields of social and business endeavor. The 20 years between the beginnings of the income tax in 1913 and 1932 had seen the great expansion of the federal tax system to meet the costs of World War I, followed by quite as dramatic tax reductions in the twenties. The twenties also witnessed in 1924 one of the comparatively few general revisions of the revenue acts; resulting in the establishment of the Board of Tax Appeals, the formulation of the elaborate reorganization and exchange provisions and of the subdivisions for the taxation to the grantor of the income of revocable and insurance trusts. The 1924 act also firmly established the policy of detailed and specific substantive provisions, as distinguished from more general statements of legislative intent, accompanied by authority to the Commissioner to fill in details by regulations. The estate tax declined to minor significance with the adoption of the 80 percent credit for state inheritance taxes; and the gift tax was invented and killed all within two years.

The catastrophe of 1929, and the resulting federal deficits in 1931 and 1932 set the stage for the adoption of new taxes and increases in rates of old ones —a policy continued practically without interruption through the succeeding decade. In 1932, the tax on a married man's net income of $5,000 was $100; it is now $381. The tax on a net income of $25,000 was $2,520; it is now $6,874. As would be expected, these increases in rates have been accompanied by increasingly severe substantive provisions, ranging from the general loophole-closing act of 1937 to the application of individual normal taxes to corporate dividends, and the emasculation of the consolidated returns section. The most notable new taxes have been the excess profits tax on corporations; the gift tax on individuals; and the undistributed profits tax on corporations, enacted in 1936 and finally repealed in 1939. The impact of the federal tax system upon the community may be indicated by the increase in total internal revenue collections from a little over one and one-half billions in 1932 to an estimated 12.2 billions in 1942.

In each year from 1932 through 1941 there has been at least one act affecting internal revenue. In recent years, there have been two and sometimes three. To analyze and interpret each of these laws in any detail would be a stupendous task, requiring several volumes.[1] Long law review articles and notes have also been written upon the implications of various major decisions of the Supreme Court

* A lecture delivered February 17, 1942 before The Association of the Bar of the City of New York under the auspices of its Committee on Post-Admission Legal Education.

[1] See, *e.g.*, Montgomery, Federal Tax Handbook 1940-41 in two volumes, Federal Taxes on Estates, Trusts and Gifts 1941-42, and Excess Profits and Other Federal Taxes on Corporations 1941-42; Paul and Mertens, Law of Federal Income Taxation, six volumes and Supplement.

during the period, such as the *Sanford*,[2] the *Hallock*,[3] the *Clifford*,[4] the *Douglas*,[5] and the *Horst*[6] cases, not to mention innumerable lower court and Board decisions. This summary will not compete with these longer and more adequate discussions. The main purpose of this paper will be to consider the major trends now discernible in statutes and decisions; and to advance a few suggestions as to future directions. Thus, I shall attempt no section by section legal interpretation of the excess profits tax law in whole or in part; but I shall advance a few tentative conclusions as to its probable utility and consequences in our tax system. It has seemed convenient, mainly for purposes of clarity, to separate the discussion of the statutory history of the period from the judicial history. To a considerable degree, the Supreme Court was construing the legislation of the twenties, not of the thirties. At the end, by way of conclusion, I will try to draw together some of the comments as to the future, many of which will appear in connection with the events of the decade under review.

I. Statutory History

Ten years have seen the addition and repeal of many pages in the statute books, but the fundamental policies have remained curiously static. The great changes have not been in the general philosophy of the revenue acts, but primarily in the addition of new taxes. The core of the structure has remained the same. Additions have been stuck on here and there, which do not fit very well, for the architects had differing ideas. The roof has been pretty completely patched, so that it would not leak so much, and fresh paint has been put on from time to time; but certainly the old house built in the twenties is still recognizable and its foundations are unchanged. Thus, there have been no such changes in the income tax even as the reorganization provisions or the trust provisions added in 1924. Typical changes have been more rigorous sections as to personal holding companies, foreign and domestic;[7] alterations in the basis provisions;[8] a section on the accrual of income to a decedent[9]—important to the persons affected, but not of much general interest.

1. *Administrative Improvements.*

The comparative sterility of the Congress and the Treasury in formulating and enacting broad general improvements that must be studied for months and years before adoption, is perhaps the most striking feature of the past decade. The major changes have been essentially administrative in character. In 1939, the revenue laws were consolidated into a Code, without any intention of material alteration, and it was then enacted into law. Since 1939, new revenue enactments have been in the form of amendments to the Code. The resulting convenience to lawyers and taxpayers is a major gain, even though the

[2] Estate of Sanford v. Com'r., 308 U. S. 39 (1939). Magill, *The Federal Gift Tax* (1940), 40 Col. L. Rev. 773; and see Wales, *Indian Gifts* (1939), Ill. L. Rev. 119.

[3] Helvering v. Hallock, 309 U. S. 106 (1940); 49 Yale L. J. 1118 (1940).

[4] Helvering v. Clifford, 309 U. S. 331 (1940); Parenstedt, *The Broadened Scope of Section 22 (a)*, (1941), 51 Yale L. J. 213; Magill, *The Federal Income Tax on the Family* (1941), 20 Texas L. Rev. 150.

[5] Douglas v. Willcuts, 296 U. S. 1 (1935); Paul, *Five years with Douglas v. Willcuts* (1939), 53 Harv. L. Rev. 1.

[6] Helvering v. Horst, 311 U. S. 112 (1940); Shattuck, *Taxation of Deflected Income* (1941), 13 Rocky Mt. L. Rev. 220; (1941) 41 Col. L. Rev. 340; (1941) 54 Harv. L. Rev. 1405.

[7] See I. R. C. Sec. 102, 500-511.

[8] For example, Sec. 113(a)(13), (15), (17), (18), (19), I. R. C.

[9] Sec. 42, I. R. C.

wording and effect of the various sections is unchanged. The Treasury has recently published a proposed internal revenue administrative code, after four years of preparation, which would modernize and clarify the existing statutory provisions, many of which date back to the post-civil war era. The work has been carefully done; and in due course the Code will probably be enacted.

Two other important administrative changes are sections 3760 and 3801 of the Internal Revenue Code, originally enacted in 1938. The first authorizes the Commissioner to issue rulings and final closing agreements with respect to proposed future transactions, not merely with respect to past situations. Thus a taxpayer may submit to the Commissioner a proposed contract, trust, or reorganization agreement for a ruling as to its tax consequences. If the ruling be unfavorable he need not accept it; nor does he need to proceed with the proposed transaction as outlined to the Commissioner. However, if the ruling is satisfactory he may then conclude a binding agreement with the Commissioner that the transaction will be taxable as the ruling provides. In this way, a good deal of the tax uncertainties surrounding important prospective arrangements can be eliminated. The section has been much used, and, I think, reasonably administered.

The other section is designed to lift the bar of the statute of limitations in stated situations when either the Commissioner or the taxpayer maintains as to some item of income or deduction a position inconsistent with that asserted in a prior year otherwise outlawed by the statute of limitations. The inconsistency may relate to the person who is to report or deduct the item, the year in which the item is to be reported, or the basis of property. The purpose of the section is to prevent double taxation of the same item of income, double deductions, or inequitable avoidance of tax.[10] The section does not reopen the return for the past year for all purposes; but only for the purpose of adjusting the inconsistency. The section, though complicated, by no means covers all possible cases of inequities of this character. It is a good start; it seems to have worked satisfactorily; and as experience develops, it ought to be extended further.

2. *Taxation of State Officials and Bonds.*

Among other significant changes was the enactment of the public salary taxing act, to bring state officials within the ambit of federal income taxations, and vice versa. The way was opened for the statute by *Helvering* v. *Gerhardt,*[11] and *Graves* v. *O'Keefe,*[12] indicating that such a provision would be constitutional. Although recommendations were made from time to time for the elimination of the tax exemption accorded to interest on state and municipal bonds, nothing was actually done. Congress did, however, eliminate exemption with respect to obligations of the United States and its agencies issued after March 1, 1941.[13] In war times there is

[10] See Maguire, Surrey, Traynor, *Section 820 of the Revenue Act of 1938* (1939), 48 YALE L. J. 509, 719; Kent, *Mitigation of the Statute of Limitations in Federal Tax Cases* (1939), 27 CALIF. L. REV. 109; (1939) 39 COL. L. REV. 460.

[11] 304 U. S. 405 (1938), holding an engineer employed by the Port of New York Authority subject to federal income tax on his salary.

[12] 306 U. S. 466 (1939), holding an attorney employed by the Federal Home Owners Loan Corp. subject to the New York State income tax; and expressly overruling Collector v. Day (11 Wall. 113) and N. Y. ex rel. Rogers v. Graves (299 U. S. 401).

[13] Chap. 7 of Public Laws 77th Cong. 1st Sess. 1941; see also GRAY, DERIVATIVE TAX IMMUNITY AND THE INCOME FROM STATE BONDS (1941).

little excuse for preserving one class of income in a bomb-proof shelter, while all other classes are being very heavily taxed. The exemption has long been a major form of tax avoidance, and this is the best possible time to eliminate it.

3. *Changes Affecting Corporations.*

The consolidated returns provisions, recognized as necessary to a business-like determination of the income of an affiliated group, were eliminated in 1936 except as to railroads,[14] but when the excess profits tax came in, consolidated returns were permitted as to it.[15] The section applicable to the income tax ought to be extended to all classes of corporations, particularly in view of present business uncertainties and the high tax rates. The reorganization provisions have been progressively tightened, and some forms of tax-free reorganization eliminated,[16] a process in which the Supreme Court assisted, not always intelligently.[17] Personal holding companies, foreign and domestic, have been so burdened with additional taxes and restrictions,[18] that no one would advocate the formation of one nowadays. Indeed lawyers have been spending much time, in recent years, trying to evolve satisfactory methods of getting rid of existing personal holding corporations. Another item in the catalog of amendments adversely affecting corporations and investments in corporations was the elimination in 1936 of the credit against the normal tax theretofore granted individuals for dividends received from corporations. In 1935, the previous full deduction allowed to one domestic corporation for dividends received from another—intended to prevent the multiplication of taxes on corporate income received by a subsidiary—was reduced to 90 percent.[19] In 1936, it became 85 percent,[20] at which figure the credit has since remained.[21] The effect of these changes is to impose an additional tax of about 4⅔ percent on income derived by a corporation through its subsidiary.

The doing of business in corporate form has become quite uneconomical, in view of the high rates of the various forms of taxes imposed on corporations, as well as the several restrictive amendments referred to. It is surely much cheaper today for a partnership to conduct an enterprise than for a corporation. The premium which must now be paid for the insurance of corporate limited liability is very high; and a lawyer should always explore the possibilities of some other type of organization. Again, since interest is deductible, whereas dividends are not, there is a strong tax incentive toward the use of notes, debentures or bonds in financing, rather than preferred stock. Few would argue that the tax laws should particularly encourage debt rather than equity financing. Some day the whole system of corporate taxation must be thoroughly overhauled, not by the addition or subtraction of a few gadgets here and there; but by a reorientation of the basic theory

[14] 41 Col. L. Rev. 1357. See Sec. 141, I. R. C.
[15] Sec. 730, I. R. C.
[16] The former sec. 112(g) was deleted in 1934; under it, a stockholder of Corporation A realized no gain on the receipt of stock of A's newly organized subsidiary B, in which A had segregated some of its assets. *Cf.* the changes in the basis provisions Sec. 113 (a) (7) and (8), making them more broadly applicable in carrying over the transferor's basis to the transferee.
[17] See *e.g.* U. S. v. Hendler, 303 U. S. 564 (1938), holding an assumption of indebtedness to be "boot" in a reorganization, a decision which required prompt statutory correction [See secs. 112(g), 112(b)(5), 112(k), 113(a)(b)].
[18] See the sections cited *supra* note 7.
[19] Sec. 102(h), Rev. Act of 1935, amending sec. 23(p), Rev. Act of 1934.
[20] Sec. 26(b), Rev. Act of 1936.
[21] Sec. 26(b), I. R. C.

of the tax.[22] The ability to pay that everyone glibly talks about is the ability to pay of the individuals who own the income producing assets or business. A proper tax system will be so constituted that the taxes or corporate income are, at least for the most part, determined with reference to the total incomes of those entitled to the corporate earnings.

4. *Changes Affecting Individuals.*

Significant amendments affecting individuals, other than the enactment of new taxes and increases in the burdens of old, were not numerous. In 1934, the phrase "during the taxable year" was eliminated from Section 166, dealing with revocable trusts, so that the income of trusts revocable upon notice of a year and a day became taxable to the settlor. This, it seems, should have been the result without a statutory change, but the decisions were generally otherwise.[23] The same type of problem is presented, however, by the more difficult case of a trust, revocable upon some contingency, such as the death or marriage of a beneficiary. Cases of this character should, it seems, turn upon the degree of control in fact which the settlor has retained. Now that we know that the settlor is taxable on the income of a short term trust for a member of the intimate family group,[24] we may surmise that he will be taxable upon the income of a trust for the benefit of members of the immediate family, if his power to revoke arises after two or three years notice,[25] or upon the death of an aged relative,[26] or upon the marriage of an eligible daughter. On the other hand, a power to revoke upon the death of a daughter in good health gives no real control to the settlor; and in the absence of other *Clifford* case factors discussed below, should not render the settlor taxable.

The capital gains provisions, always an uneasy section of the statute, were twice revamped, in 1934 and 1938. The present method of taxation[27] gives long-term gains the benefit of a comparatively low flat rate of tax, and allows the deduction of capital losses from ordinary income, subject to limitations. The problem of equitable taxation of this kind of income has not yet been solved; and the argument whether capital gains should be taxed at all still goes on.

Provision was also made in 1934 for the taxation as income to a decedent, even on a cash basis, of items which had accrued during the period just before his death.[28] The amendment was aimed at cases in which income earned by the decedent and paid after his death was not subject to inclusion in an income tax return at all.[29] The Supreme Court in 1941 held[30] that fees only partially earned before death in amounts not fixed until later nevertheless "accrued" in part for this purpose before death. There surely will be cases in which the determination of the amount of the accrual

[22] See, *e.g.*, the excellent report of the National Tax Association Committee on federal taxation of corporations, PROCEEDINGS 1939, p. 534; James, *Irascible Comments on the Revenue Laws* (1941), 9 U. OF CHI. L. REV. 58, 64.

[23] See MAGILL, TAXABLE INCOME, 279 *et seq.*

[24] See Helvering v. Clifford, 309 U. S. 331 (1940) discussed *infra* p.

[25] See Helvering v. Elias, 122 F. (2d) 171 (CCA 2, 1941), where the power to revoke arose 6½ years after the creation of the trust.

[26] *Cf.*, however, the pre-Clifford decision of Corning v. Com'r., 104 F. (2d) 329 (CCA 6, 1939).

[27] Contained in Sec. 117, I. R. C.

[28] Sec. 42, I. R. C.

[29] The right to receive the amounts had been reported for estate tax purposes; hence the subsequent receipts were not regarded as income, except as they exceeded the estimated value at death. Nichols v. U. S., 64 Ct. Cl. 241, *cert. denied* 277 U. S. 584 (1928); *cf.* Bull v. U. S., 295 U. S. 247 (1935).

[30] Helvering v. Estate of Enright, 312 U. S. 636 (1941).

will be extremely difficult and quite speculative since not all the controlling factors will have occurred prior to death. The decision may also be a forecast of a too-extensive application of the section in other situations. Suppose a corporate officer dies at a time when he is entitled to receive a pension for his life, with a right in his widow to receive an annuity for a period of years after his death. Is anything to be included on this account in his income tax return for the period ended with his death? The statute presumably meant that items of income which can be regarded as earned before death should be taxed as income. Granted that the pension rights of the decedent and widow can be valued, the prospective payments to each are income when received,[31] not the decedent's income for the period before his death. It would be particularly inequitable to tax to the decedent as income the large sum representing the commuted value of payments to be made for years to come. Unless forthcoming decisions suitably restrict the possible scope of the *Enright* case, clarifying legislation may be necessary.

5. *New Taxes and Rate Changes.*

Although there was a flood tide of particular excises in 1932 as a substitute for a general sales tax then proposed by the Ways and Means Committee, these concern lawyers comparatively little. The gift tax,[32] resurrected in the same year, though not a large revenue producer, provides a great many legal problems. Every case of an *inter vivos* family settlement has gift tax connotations.[33] The statute is unique among modern revenue laws in containing practically no specifications of the transfers which are deemed to be gifts and therefore taxable. We must work out what are taxable transactions from the *Sanford* case,[34] and to some degree from the *Hallock* case,[35] both of which will be considered later.

The rates of the gift tax have been maintained at a numerical ratio of three-fourths of the corresponding estate tax rates. Thus there is a strong fiscal sanction in favor of gifts during life rather than bequests at death. This sanction acquires additional force from the existence of a special exemption of $4,000 per year per person for outright gifts (other than gifts in trust or gifts of future interests in property).[36] In addition, there is a cumulative over-all exemption of $40,000.[37] Thus in the case of an aggregation of property of any size, it is possible to calculate exactly what is the most economical mode of disposition.[38] Generally, it will involve the transfer of the greater part, but not all, of the property during life, and the remainder at death. There is at present no statutory correlation between the gift tax and the estate tax, other than provision for credits against the estate tax, for gift taxes paid.[39] Each has its own exemptions.

The excess-profits tax was the other major impost during the period, arriving in 1940, quickly amended in 1941.[40] At first blush all would agree that in times of national emergency there is no place

[31] As to the computation of the amount of taxable income, see sec. 22 (b)(2), I. R. C.

[32] The present provisions appear in I. R. C., Ch. 4, §§1000-1031.

[33] A discussion of some of these problems appears in Magill, *The Federal Gift Tax*, cited *supra* note 2.

[34] Cited *supra*, note 2.

[35] Cited *supra*, note 3.

[36] Sec. 1003(a)(2), I. R. C.

[37] Sec. 1004(a), I. R. C.

[38] See, *e.g.* MONTGOMERY, FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS, p. 671.

[39] Sec. 813(a), I. R. C.

[40] Sec. 710-752, I. R. C.

for excess profits; they should flow to the public, not the corporate treasury. But to determine what are the excess profits of a corporation has proved to be an individualistic matter; it is almost impossible to formulate a test which will operate both justly and precisely.[41] The law now embodies two yardsticks, either available to the corporation at its option. Under the one, excess profits are profits in excess of 95 percent of average earnings for 1936 to 1939 inclusive.[42] Under the other, excess profits are profits in excess of 8 percent of the first 5 millions and 7 percent of the balance of invested capital.[43] There are many adjustments largely adopted to take care of special cases brought to the attention of the financial committees of the House and Senate.[44] Difficulties of more general occurrence, such as the accurate determination of invested capital of a corporation which has gone through reorganizations in earlier years; or an excessive tax today due in large part to excessive depreciation allowed in the twenties when tax rates were much lower, are not cared for. Finally, this form of tax takes no account of the fact that many stockholders, who will bear the tax in reduced dividends, bought in at prices on which pre-1940 dividends gave only a moderate return. There is a good deal of inequity to them in compelling them to bear a tax which has no relation to anything for which they are responsible. One by-product of this line of reasoning is that the excess profits tax would become much more inequitable if it were based exclusively on invested capital.

[41] See Magill, *Relief from Excess Profits Tax* (1941), 89 U. of Pa. L. Rev. 843.
[42] Sec. 713, I. R. C.
[43] Sec. 714, I. R. C.
[44] See, *e.g.*, Sec. 721, 722 and 723.

These are only the highlights of the statutory changes. I have not mentioned the steep increases in rates and the lowering of exemptions of the major taxes, since these present legal problems only indirectly. In concluding this branch of the discussion, I should like to direct your attention to some of the major statutory tasks which remain to be done. The reorganization and exchange provisions ought to be completely overhauled, modernized and simplified. They were originally prepared in the twenties with the basic purpose of facilitating corporate readjustments. They have been the subject of numerous legislative and judicial alterations in the thirties, all based on the theory that corporate readjustments should not be facilitated, but zealously watched to prevent tax avoidance. The sections are unduly technical and cumbersome, and a trap for the unwary. The Treasury and Congress should now decide what the policy is to be; draw up a much simpler statement of it; and then avoid the inconsistency of advocating a position before the courts, as in the *Hendler* case,[45] which everyone knows is bad policy, whatever its technical merits.

Litigation would be saved if the gift and estate tax sections were correlated into a single tax upon the transfer of property. There is no real need, to say the least, for encouraging controversy as to whether a particular transfer should be taxed both during life and after death; for a double set of rates and exemptions; and for the present confusion as to the applicability of the gift tax. Probably most experts, other than the draftsmen who would have to make it, would agree upon the technical desir-

[45] Cited *supra*, note 17.

ability of such a correlation. The objections to it are largely practical; the likelihood that it would form the basis for a further decrease in exemptions and an increase in rates; and thus a further diminution in the amount of property one can pass on to one's widow or children or others. These are cogent reasons for more careful examination of the social and economic consequences of taxation than they seem to have received. A proper correlation would incidentally involve a simplification of the estate tax provisions, as well as a determination of the policy to be followed in those situations where a man is taxed on the income of property on the theory that it is his, and on a gift of it on the theory that he has transferred it to someone else.

An administrative code, such as that presently proposed by the Treasury should be adopted. The code should, however, straighten out the tangle of federal tax jurisdiction in federal courts and the Board of Tax Appeals. A good start would be to make the Board a court, with jurisdiction over refund as well as deficiency cases. If this were done, the institution of tax cases in other federal courts would probably disappear. Finally, there is a real opportunity to revise and simplify the whole structure of tax legislation. The Supreme Court has recently been astute to work out the specific application of the general statutory policy it saw in Section 22. There is no reason to suppose that the court would not perform the same function in other instances where a general policy was stated. Nearly 30 years of experience with the income tax ought to be enough to enable basic policies to be formulated. The task is not an easy one, but a competent statutory restatement of the more important federal tax laws ought to make the law more intelligible, and reduce litigation as well.

II. Judicial History

An enumeration of the federal tax decisions of the Supreme Court during the past decade gives striking evidence of the variety, as well as the importance, of the major doctrines which have been developed. To understand and apply the gift tax to present-day transactions requires a careful analysis of the *Sanford*[46] decision. The *Hallock* case[47] conditions a good part of the estate tax field; and there are several other decisions, like the *Grinnell*[48] case, that instruct us how to make property settlements today. The income tax has had a wide range of development at the hands of the Court, ranging from the constitutional questions involved in the *Gerhardt* case[49] to the deduction problem of the *Higgins* decision[50] last term. It is hard in this paper to be at once intelligible and concise and thorough. Attention will have to be directed principally to trends and topics, rather than to particular cases; and more attention will be given to recent decisions than earlier ones.

1. *The Gift Tax* having been held constitutional,[51] the next question was its scope. Suppose that a donor transfers part but not all of the bundle of rights constituting ownership of property. For example, he parts with title irrevocably, but preserves a power to

[46] Cited *supra*, note 2.
[47] Cited *supra*, note 3.
[48] Helvering v. Grinnell, 294 U. S. 153 (1935).
[49] Cited *supra*, note 11.
[50] Higgins v. Com'r., 312 U. S. 212 (1941).
[51] Bromley v. McCaughn, 280 U. S. 124 (1929).

alter beneficiaries. Or he causes property for which he has paid to be transferred to himself and his wife as joint tenants or tenants by the entirety. Or he transfers either a life estate or a reversion, and retains the remaining interest.

Estate of Sanford v. *Com'r*[52] involved the first situation. Sanford had created a trust for named beneficiaries in 1913, reserving powers to revoke or modify. In 1919, he surrendered the power to revoke, but preserved the power to modify, except that he might not secure principal nor income for himself. In August 1924, during the life of the first gift tax, he relinquished this latter power. Years later, following the decision in *Hesslein* v. *Hocy*[53] the Commissioner ruled that the gift was not complete until the 1924 relinquishment, and therefore determined a tax. The Board, Circuit Court of Appeals[54] and the Supreme Court sustained the tax. The Supreme Court relied largely upon estate tax cases, holding similar transfers in trust includible within the gross estate. The Court stated that the estate tax and gift tax are *in pari materia;* and added:

> "We think, as was pointed out in the Guggenheim Case [288 U. S. 280], supra, 285, that the gift tax statute does not contemplate two taxes upon gifts not made in contemplation of death, one upon the gift when a trust is created or when the power of revocation, if any, is relinquished and another on the transfer of the same property at death because the gift previously made was incomplete."[55]

The Court also referred to the secondary liability of the donee for the tax, impossible of conclusive assertion if the donee is uncertain; and to the confused administrative practice.

All would agree on the desirability of construing the gift tax, the estate tax and the income tax as a harmonious whole. On the other hand, it has seemed reasonably clear that the present statutes not only do not bring about this result, but to an important degree specifically assert the contrary theory. The creation of a joint tenancy or a tenancy by the entirety may, it seems, involve a taxable gift, for valuable interests may have been bestowed upon the other tenant which are thereafter entirely beyond the control of the donor.[56] Presumably the credit for the gift tax against the estate tax[57] was intended to meet such situations. Again, in the *Hallock* type of situation—the creation of a trust with a life estate and remainder in others, but with a possible reversion to the settlor—the settlor has created beyond recall valuable interests in others. The fact that part of the value of the property may be included in his gross estate does not seem conclusive to deny the making of a present gift. A better test would seem to be: Has the transferor completely relinquished *inter vivos* ownership and control of interests in the property having an ascertainable value? If he has, a gift tax may be asserted, even though the estate tax may also be applicable.

Thus the *Sanford* decision, though no doubt intended to introduce more order into the relations of the three major taxes, raises questions more serious than those it settles. It established

[52] Cited *supra*, note 12.
[53] 91 F. (2d) 954 (CCA 2, 1937).
[54] 103 F. (2d) 81 (CCA 3, 1939).
[55] 308 U. S. at 45.

[56] See Lilly v. Smith, 96 F. (2d) 341 (CCA 7, 1938); *cert. denied* 305 U. S. 604 (1939); (1938) 17 N. C. L. Rev. 71, Com'r. v. Hart, 106 F. (2d) 269 (CCA 3, 1939); Com'r. v. Logan, 109 F. (2d) 1014 (CCA 3, 1940), Memorandum opinion following the *Hart* case, *supra*. See also Magill, *The Federal Gift Tax*, (1940) 40 Col. L. R. 773, 785; (1938) 37 Mich. L. Rev. 340, (1938) 47 Yale L. J. 1213.
[57] Sec. 813, I. R. C.

clearly, however, that one can always avoid a gift tax upon the creation of a trust by reserving to the settlor a power to modify; the estate tax will then be applicable in due course.

2. *The Estate Tax.* The most significant estate tax decision of the decade was *Helvering* v. *Hallock.*[58] I shall therefore focus attention upon it, giving only mention in passing to other important decisions. *Heiner* v. *Donnan*[59] established the invalidity of a conclusive presumption that transfers within two years of death are subject to estate taxation. The second gift tax was a direct consequence. *Helvering* v. *Grinnell*[60] held that property passing under the will of the donor of a power of appointment, because the appointees had renounced their rights under the will of the donee who exercised the power in their favor was not subject to tax in the estate of the donee. This particular loophole has not been plugged; property passing under a special power of appointment, or by virtue of the non-exercise of a power is still free from tax in the estate of the donee; and thus an estate tax can be avoided on the passage of the property through one generation at least.[61] Lawyers would be well-advised, however, not to depend too heavily upon the continuance of this situation. The validity of the provision for an estate tax if property transferred in trust is subject to a power to revoke in the decedent and another, even a beneficiary, was upheld.[62] The regulations defining what insurance proceeds are to be included in the gross estate were twice changed. At present, either the payment of premiums by the decedent or the retention of incidents of ownership will subject his estate to tax.[63]

The opinion in the *Hallock* case dealt with five different trusts, containing the one common feature of provisions, differing in exact terms, whereby if the settlor survived the life beneficiary, he was to take the property. Thus although the case is sometimes spoken of as involving a possibility of reverter, the decedent's interest was more substantial. In each case, the settlor died before the life beneficiary; and the question was whether any part of the corpus should be included in his estate. The decision for the Commissioner is devoted primarily to a criticism of the "unwitty diversities of the law of property derived from mediaeval concepts" and the overruling of *Helvering* v. *St. Louis Trust Co.*[64] and *Becker* v. *St. Louis Trust Co.*[65] decided only five years previously. The opinion does not clearly specify the exact scope of the decision; it does not even explicitly indicate how much of the corpus is to be included in the gross estate; but taken with the decisions in the courts below it appears to hold that the value of the life estates is to be deducted. This result is reasonable, first, because the life interests are vested and are unaffected by the death of the settlor; and second, because a gift tax would seem to be due with respect to them. Nevertheless, it is not clear yet that the Treasury will finally settle on this basis.

[58] Cited *supra*, note 3.
[59] 285 U. S. 312 (1932).
[60] Cited *supra*, note 48.
[61] See Griswold, *Powers of Appointment and the Federal Estate Tax*, (1939) 52 HARV. L. REV. 929; Comment by Leach, 52 HARV. L. REV. 961; (1941) 41 COL. L. REV. 149.
[62] See Helvering v. City Bank Farmers Trust Co., 296 U. S. 85 (1935).
[63] U. S. Treas. Reg. 80, Art. 25-27.
[64] 296 U. S. 39 (1935) p.
[65] 296 U. S. 48 (1935).

The best statement of the approved doctrine is a quotation from the *Klein* case:

> "It is perfectly plain that the death of the grantor was the indispensable and intended event which brought the larger estate into being for the grantee and effected its transmission from the dead to the living, thus satisfying the terms of the taxing act and justifying the tax imposed."[66]

This philosophy, as applied to cases like the *Hallock* trusts, is sound to the extent of the remainders; the transfers do in fact take effect in possession or enjoyment at or after death. As a practical matter, however, trusts with provisions of this character will give difficulties for some years to come.

3. *Income Tax.* There are at least 30 decisions of the Supreme Court in the income tax field during the past decade which are worth the careful study of any lawyer dealing regularly with these problems.[67] I have concluded to limit my discussion to seven, chosen because they have great present-day and future significance in different subdivisions of the law.

a. *Gregory* v. *Helvering*[68] and *Groman* v. *Commissioner*.[69] The requirement of a "business purpose" to insure the validity of a transaction for tax purposes has been a part of the law at least since *Gregory* v. *Helvering*. That case established the proposition, meritorious enough to a layman but not so acceptable to a technician, that compliance with the exact terms of the reorganization and exchange provisions is not alone enough. Nor, approaching a transaction from the other side, is it necessary for the Treasury to establish fraud to upset a technically letter-perfect reorganization. There is an intermediate twilight zone. Even though the transaction was meticulously carried out, and all facts were truly disclosed, if the transaction had no reason other than a saving in federal taxes, it may in substance be treated as a nullity. Oftentimes this particular test either has no relevance or is easy to meet. Sometimes it causes a good deal of trouble where, for example, the transaction obviously has tax considerations among its bases, but there are other reasons too. In general, such a transaction should be taxed as it actually occurred. In any event, considerations of prompt administration and of practical business require that in the absence of fraud transactions should

[66] 283 U. S. 231, 234 (1931).

[67] a. *Constitutional questions:* Helvering v. Gerhardt, cited *supra*, note 11; Graves v. New York ex rel O'Keefe, cited *supra*, note 12; Liggett & Myers Tobacco Co. v. U. S., 299 U. S. 383 (1937); U. S. v. Stewart, 311 U. S. 60 (1940).

b. *Corporate distributions:* Koshland v. Helvering, 298 U. S. 411 (1936)—what is a stock dividend; Gregory v. Helvering, 293 U. S. 465 (1935)—business purpose in reorganization; Groman v. Com'r., 302 U. S. 82 (1937)—transfers in reorganization to a subsidiary; Helvering v. Bashford, 302 U. S. 454 (1938)—similar; Helvering v. National Grocery Co., 304 U. S. 282 (1938)—sec. 102; Palmer v. Com'r., 302 U. S. 63 (1937)—stock rights.

c. *Concept of Income:* No. Am. Oil Consolidated v. Burnet, 286 U. S. 417 (1932)—income in dispute; Brown v. Helvering, 291 U. S. 193 (1934)—accrual of returned commissions; Bull v. U. S., 295 U. S. 247 (1935)—accrual of decedent's earnings; Helvering v. Estate of Enright, cited *supra*, note 30—same; Helvering v. Bruun, 309 U. S. 461 (1940)—improvements on leased land; Gen. Utilities Co. v. Helvering, 296 U. S. 200 (1935)—dividend in kind; Helvering v. Midland Life Ins. Co., 300 U. S. 216 (1937)—mortgage foreclosure; Helvering v. Horst, 311 U. S. 112 (1940)—assigned interest coupons; Helvering v. Eubank, 311 U. S. 122 (1940)—assigned commissions.

d. *Trusts and annuities:* Harrison v. Schaffner, 312 U. S. 579 (1941)—assigned trust income; Blair v. Com'r., 300 U. S. 5 (1937)—same; Helvering v. Clifford, 309 U. S. 331 (1940)—short term trust; Burnet v. Wells, 289 U. S. 670 (1933)—insurance trusts; Douglas v. Willcuts, 296 U. S. 1 (1935)—alimony trust; Helvering v. Fuller, 310 U. S. 69 (1940)—same; Helvering v. Schweitzer, 296 U. S. 551 (1935)—support of minors; Helvering v. Butterworth, 290 U. S. 365 (1933)—annuity; Helvering v. Reynolds, 313 U. S. 428 (1941)—basis.

e. *Deductions, etc.:* Higgins v. Com'r., 312 U. S. 212 (1941)—investment expenses; Burnet v. Huff, 288 U. S. 156 (1933)—embezzlement; Spring City Foundry Co. v. Com'r., 292 U. S. 182 (1934)—bad debts; Morrissey v. Com'r., 296 U. S. 344 (1935)—business trust.

[68] Cited *supra*, note 67, par. b.

[69] Cited *supra*, note 67, par. b.

generally be taxed according to the form they actually took. At the same time, the lawyer will certainly advise against transactions which have no sensible motive other than too acute tax consciousness.

Groman v. *Commissioner* did much more damage to the utility of the reorganization provisions. Although the case does not specifically so hold[70] it has been widely interpreted as meaning that if Corporation A agrees with Corporation B or its stockholders to acquire B's assets or stock in exchange for A's voting stock; but the actual transfer is made at A's request to A's subsidiary S, then the exchange by B or its shareholders is taxable. A corporation is not technically a party to the reorganization, and its stock is treated as cash in the hands of the recipients. With its usual genius for advancing its lines after an initial success, the Treasury has asserted a tax against B's shareholders even though the original exchange of A stock for B stock was directly with A, and only months later did A transfer the B stock to S, and dissolve B. If mergers and like transactions are to be allowed tax-free, as long as no money passes, these reorganizations should be given the same treatment, for the B stockholders have not yet realized upon their investment, but their possible profits or losses are still locked in the business. The Supreme Court has urged that there is a lack of continuity of interest. It is clear, however, that if the exchange was of A voting stock for B stock, and A retained B as a subsidiary, the reorganization would be tax-free, though here also the B stockholder exchanges a direct control over the B company for an indirect interest, usually a small minority interest, in A holding company which in turn owns the B stock. There is a curious unreality about the reasoning of the *Groman* decision and its extension to these new areas. The difficulty of reasoning from unacceptable premises, coupled with the uncertainties as to when two transactions separated in time will be regarded as steps in a single plan, when as distinct and independent,[71] has made the reorganization provisions quite unusable, except in the simplest cases. If, as seems likely, we confront an era of corporate reorganizations after the war, the Treasury and Congress should certainly act to end present uncertainties, first by the adoption of some clear philosophy on the subject of corporate readjustments; and second, by a complete revision of the present unduly abstruse, technical and largely unworkable provisions.

b. *Helvering* v. *Horst*[72] and *Helvering* v. *Eubank*.[73] The Supreme Court has dealt with a dozen cases within the decade which can be classified as involving problems of accounting for income. Some dealt with the time of realization of income,[74] some with the kind of benefit,[75] which, even in the absence of a receipt of money or property, will be taxed as income. Most of these cases have a continuing significance, but in this paper only two will be discussed at any length.

[70] Petitioner and other stockholders of I corporation agreed with G corporation to transfer their shares to a newly organized corporation S, all of whose common G would own, in exchange for G preferred, S preferred and cash. The transaction was carried out, and S dissolved I. *Held:* G was not a party to the reorganization, and the value of its preferred constitutes "boot."

[71] See PAUL, SELECTED STUDIES IN FEDERAL TAXATION (2nd series), p. 200 (1938).

[72] Cited *supra*, note 67, par. c.

[73] Cited *supra*, note 67, par. c.

[74] See, *e.g.*, No. Am. Oil Consolidated v. Burnet, *supra*, note 67, par. c; Helvering v. Bruun, *supra*, note 67, par. c.

[75] See, *e.g.*, Helvering v. Midland Life Ins. Co., *supra*, note 67, par. c.

Since 1930 it had been established that assignments of income to be earned by the assignor in the future were generally taxable to the assignor.[76] One basic reason was that the assignor controlled the earning of the income and hence its continued receipt by the assignee. What should be the result of an assignment if this control feature is missing, as transfer and delivery of interest coupons cut from a bond, and payable in the future; or an assignment of renewal commissions on life insurance already written? Some lower courts had held the assignee taxable in such situations,[77] but when the issue came squarely before the Supreme Court in 1940, it held the assignor taxable in both cases.

In the *Horst* case, involving interest coupons, assigned by a father to his adult son, the kernel of Mr. Justice Stone's philosophy appears in this sentence:

> "Such a use of his economic gain, the right to receive income, to procure a satisfaction which can be obtained only by the expenditure of money or property, would seem to be the enjoyment of the income whether the satisfaction is the purchase of goods at the corner grocery, the payment of his debt there, or such non-material satisfactions as may result from the payment of a campaign or community chest contribution, or a gift to his favorite son."[78]

A literal application of this doctrine might lead to the taxation to the settlor of the income of any trust. Conceivably it might ground the taxation to the donor of interest on bonds or dividends on stock given to the donor's wife or son. Probably the decisions do not go so far. Bearing in mind that the income evidenced by the coupons had accrued wholly or partly in the donor's hands, the *ratio decidendi* might be no more than that indicated by Mr. Justice Holmes' metaphor in the *Earl* case: that an income tax cannot be escaped by anticipatory arrangements by which "the fruits are attributed to a different tree from that on which they grew." At any rate, the second Circuit Court of Appeals does not believe that the *Horst* decision "means that every settlor of a trust is taxable upon whatever part of the income is applied to purposes, the furtherance of which give him satisfaction."[79] By the same token, the *Eubank* case means that one's earnings are necessarily taxable to one's self, whether assigned before or after the work is done.

Since the decisions may be given a wider application than that advocated here, and since the stated definition of income goes beyond previously accepted standards, attention must be given them in nearly all cases in which there is or may be a question of the person to whom income is to be taxed. Finally, although the Court ostensibly distinguished the *Blair* case[80] (an assignment of income from a trust), these decisions certainly restricted it greatly, as *Harrison* v. *Schaffner*[81] directly shows.

c. *Douglas* v. *Willcuts*[82] and *Helvering* v. *Clifford*.[83] Having determined years ago that alimony was not taxable to the divorced wife and not deductible

[76] Lucas v. Earl, 281 U. S. 111 (1930).
[77] See Hall v. Burnet, 54 F. (2d) 443 (App. D. C. 1931), *cert. denied* 285 U. S. 552 (1932); Rosenwald v. Com'r., 33 F. (2d) 443 (CCA 7, 1929).
[78] 311 U. S. at 117.
[79] Com'r. v. Chamberlain, 121 F. (2d) 765 (CCA 2, 1941).
[80] Cited *supra*, note 67, par. d.
[81] Cited *supra*, note 67, par. d, holding that an assignment of dollar amounts by the life beneficiary to her children out of trust income for the year, did not reduce the income taxable to her.
[82] Cited *supra*, note 67, par. d.
[83] Cited *supra*, note 67, par. d.

by the husband,[84] the Court arrived without much difficulty at the conclusion that the income of a trust for the benefit of a divorced wife, sanctioned by the divorce decree, is taxable to the settlor husband.[85] The income is being used to meet his obligation to support established by the decree. In the same way, the income of trusts used to support minor children of the settlor is taxable to him.[86] Recently, taxpayers obtained a more discriminating analysis of the alimony trust cases. Under particular state laws, the creation of the trust may constitute a complete discharge of the husband's duty to support, like the compromise of any other claim, so that the payments to the former wife cannot properly be regarded as payments in satisfaction of an existing pecuniary obligation of the settlor. If this legal situation can be established, the trust income is not taxable to the settlor.[87] The burden is not, however, an easy one to sustain.[88]

The Senate proposed in 1941 that alimony and separate maintenance payments whether or not paid by a trust should be taxable to the spouse who receives them, and not to the other spouse.[89] The amendment was defeated in conference, but there are signs that it will reappear this year. There is much to be said for an application here of the general working rule that ordinarily income should be taxed to the recipient.

In *Helvering* v. *Clifford*[90] the Court held that the settlor was taxable on the income of a trust whose existence was limited to 5 years, after which the corpus reverted to the settlor, the settlor's wife being the beneficiary and the settlor trustee. The Court reached the result under Section 22(a), the general definition of income, at the same time holding that it could not be reached under the specific language of section 166.[91] The Court brushed aside the argument that the general sections of the law were not capable of this construction since Congress in 1934 had neglected to act on the recommendation of the Treasury that short term trusts be expressly dealt with. The majority opinion relied upon three factors: the short term of the trust, the fact that the beneficiary was the wife, and the retained powers of the husband-settlor.

The lower Courts have since struggled to determine the application of variants of these factors in other cases. They have properly been regarded as complementary.[92] The likelihood of the settlor's success in close cases is not great. Even though the trustee is a trust company or outsider, the income is apt to be taxed to the settlor if the beneficiaries are members of the "intimate family group," and the settlor possesses some degree of control.[93] Substitute a term of less than five years for some

[84] Gould v. Gould, 245 U. S. 151 (1917). This opinion also contains the now almost forgotten sentences, once quoted in every taxpayer's brief: "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen." The *Clifford* decision, discussed in this section, indicates why the quotation is no longer apposite.

[85] This is the decision in the *Douglas* case.

[86] Helvering v. Schweitzer, cited *supra*, note 67, par. d.

[87] See Helvering v. Fuller, cited *supra*, note 67, par. d.

[88] See Helvering v. Leonard, 310 U. S. 80 (1940); Helvering v. Fitch, 309 U. S. 149 (1940).

[89] H. R. 5417, 77th Cong., 1st Sess., as passed by the Senate, Sec. 117; Senate Rept. 673, 77th Cong., 1st Sess., p. 32.

[90] Cited *supra*, note 67, par. d.

[91] Helvering v. Wood, 309 U. S. 344 (1940).

[92] Helvering v. Elias, 122 F. (2d) 171 (CCA 2, 1941).

[93] See Com'r. v. Buck, 120 F. (2d) 775 (CCA 2, 1941).

control by the settlor, and the result has been the same.[94] The settlor has succeeded in cases where, though the term was 3 years and he was one trustee, the beneficiary was an educational institution;[95] and where the term was 10 years, the trustee independent, and the beneficiary outside the family.[96] Thus the protective devices of powers of revocation, or alteration, or of other forms of control have been pretty well outlawed. We are approaching steadily closer to the taxation of family income as a unit. If the joint return proposal comes to pass, that end will have largely been reached.

d. The *Higgins* decision[97] upset a long era of departmental policy of allowing deductions for investment expenses of various kinds though not connected with a business. Had the court been as willing to give deduction provisions a liberal interpretation in the interests of wise policy, as it has frequently been in the case of income provisions, the decision need not have been made. It is now generally agreed that an amendment to Section 23(a) must be promptly adopted to obviate the decision; and to avoid the inequity of compelling investors in substance to pay a tax on their gross income while traders are taxed on their net.

Conclusion

A time of war is not a time for radical improvements in tax laws in the interests of equity, although a philosopher might suppose that, as legislators increase the tax burden, they would feel an increasing responsibility for improving the operation of the revenue laws. Actually, the legislative process does not operate in this way. The need for revenue is paramount and, since amendments in the interests of equity usually diminish the revenues, such amendments are not apt to be made except in times when the Treasury is under much less strain than it is now. Consequently, of the various changes suggested above, it is not very likely that many will be enacted into law in the next few years except those which will contribute directly to the Treasury. For somewhat similar reasons, technical experts who are working with the very difficult task of devising statutes to raise more revenue than we have ever raised before, are not likely to find time to make many technical or administrative improvements.

The outlook for the immediate future then is not very hopeful either from the point of view of the objective student of taxation or of the taxpayer himself. It is evident that individual and corporate income tax rates will be decidedly increased and probably the excess profits tax rates will also be raised. The same process of increasing rates and lowering exemptions will doubtless be applied to the estate tax and to the gift tax even though their immediate revenue significance is not very great. A further increase in the scope and rates of excise and sales taxes is also in the cards. The principal administrative change may be the institution of a system of withholding income taxes on some of the commoner forms of recurrent income, such as salaries, wages, dividends and interest. It is possible that a correlation of the

[94] Com'r. v. Barbour, 122 F. (2d) 165 (CCA 2, 1941).
[95] Com'r. v. Chamberlain, 121 F. (2d) 765 (CCA 2, 1941).
[96] Com'r. v. Jonas, 122 F. (2d) 169 (CCA 2, 1941).
[97] Cited *supra*, note 67, par. e.

estate and gift tax might occur in time; it is more likely that the scope of some of the estate tax provisions, such as that including the exercise of powers of appointment in the gross estate, will be increased. On the other hand, a broad general revision of the income tax law, or even of the reorganization provisions, is apt to wait until the present emergency is over.

The formulation of a well integrated tax policy for the country, including of course the correlation of state and federal taxing systems, has long been one of our major neglected problems of government. It may be too much to hope that the Treasury will undertake to formulate such a program under the pressure of the emergency. It is not too much to hope that ways and means should be adopted now for the consideration and advancement of such a program to be carried into execution immediately after the termination of the emergency. To choose the personnel and to arrange the necessary collaboration between the Treasury, the Congress and the States is an enormous task, but it is one which will have to be performed if the country is ever to have the fair and intelligible tax system which will be a prime necessity after the war.

RECENT DEVELOPMENTS AND CURRENT TRENDS IN THE LAW OF LIFE INSURANCE*

By Thomas I. Parkinson

President, Equitable Life Assurance Society

In commencing our consideration of this very broad subject, I wish first of all to bring to your attention some of the recent contributions which the Legislature has made to the development of our law, as it relates to the business of life insurance.

A few years ago when I was teaching insurance law, I often felt it necessary to apologize for any emphasis on legislative contribution to the law or the problems of administrative law involved in its enforcement. In those days lawyers and students of the law looked upon judicial decisions as involving what they fairly called the "bread and butter" problems as distinguished from the intellectual luxuries involved in legislation and its administration. Tonight I make no such apology for referring to recent legislative contribution to the law of life insurance. Perhaps I am gloating a little over the shift which has made legislative regulation and its administration really as important as I used to have difficulty in persuading my students it ought to be.

Outstanding in this legislative field is the new revision of the Insurance Law, or the "Code", as it is commonly referred to by our company lawyers in distinguishing it from the old law of 1909. This new law was enacted by the Legislature at its 1939 session, and went into effect January 1, 1940. It represented the results of some four years of cooperative effort on the part of representatives of the Insurance Department,

* A lecture delivered March 10, 1942, before The Association of the Bar of the City of New York under the auspices of its Committee on Post-Admission Legal Education.

under the leadership of Professor Patterson, a special Joint Legislative Committee under the chairmanship of Hon. R. Foster Piper, and of representatives of the companies. It has been and will, in my opinion, continue to be regarded as a real landmark in the field of insurance law. When submitting the first draft for public consideration, its draftsmen stated that it was designed primarily to clarify and simplify the insurance law as it then stood, as a result of legislative, judicial and administrative action. In its final form, however, it did effect numerous changes of the existing law, and I now desire to call to your attention a few of the more important ones which affected the life insurance business.

Before doing this, however, I should like to call your attention to Article III, which contains a set of administrative and procedural provisions relating to rules and regulations, notice, hearings, judicial review, and various other matters which are of importance from an administrative law standpoint. In these days it is interesting to find an administrative body not only willing but anxious to make more specific the rules by which its actions are to be governed, and the manner in which they may be reviewed.

Turning now to Article VII, which is entitled "The Insurance Contract", we find that an effort has been made to assemble under this one heading all of the various substantive provisions having to do with the terms and the enforceability of insurance contracts.

Section 142, which is generally referred to as the "entire contract" section, derives mainly from Section 58 of the old law, but contains several changes from that Section. The most important changes which it makes relate to the subject of reinstatements of lapsed policies. It is now provided that statements made to obtain the reinstatement or renewal of policies, as well as those for the original insurance, shall be deemed representations and not warranties.

Subdivision 5 of the Section adds another new provision with respect to applications for reinstatement. It does not require that such applications be made a part of the policy, but provides that if the insured, beneficiary or assignee shall make written request to the insurer for a copy of the application for reinstatement, the insurer shall, within fifteen days after receipt of such request at its home office or any branch office, deliver or mail to the person making such request a copy of such application. If the insurer shall fail to make the copy so available, it shall be precluded from using the application as evidence in any action based upon or involving the policy or its reinstatement.

The new Section also provides that "No application for the issuance of any such policy or contract shall be admissible in evidence unless a true copy of such application was attached to such policy when issued". This appears to override the practice which the courts had developed under Section 58 of the old law, of permitting the introduction in evidence of a copy of an application, even though not attached to the policy at the time of issuance, for the purpose of rebuting an alleged waiver or estoppel.[1] In such cases the courts said that the use of the language of the application related to a matter "extrinsic to the con-

[1] See Abbott v. Prudential, 281 N. Y. 375.

tract" itself, and was therefore not prohibited by Section 58, providing that the policy must contain the entire contract between the parties and nothing must be incorporated into the contract by reference.

Section 146 imports into the New York law for the first time a definition of insurable interest which is patterned upon the Pennsylvania statutes. The balance of the section is derived from Section 55 of the old law with a few additions: A provision has been added to the effect that no person shall procure a contract of insurance upon the life of another unless the benefits under such contract are payable to the person insured or his personal representatives or to a person having, at the time the contract is made, an insurable interest in the person insured. In order to give a sanction to this limitation it is further provided that if a beneficiary, assignee or payee under a contract made in violation of this provision shall receive payment of benefits accruing thereunder the person insured or his executors or administrators may maintain an action to recover such benefits from the person receiving them. It is believed that these provisions effect a change in the old New York law, there having been no requirement prior to the Code that the beneficiary have an insurable interest. The only requirement was that the person effecting the insurance have an insurable interest at the time the contract was effected.

The provision in present Section 55 that no policy shall be issued "except upon the application of the person insured" has been changed to include a case where the insured "consents in writing to the making thereof", thus bringing the law into conformity with the actual conduct of the business.

The instances where no consent is necessary have been broadened. Now either a wife or a husband may effect insurance upon the person of the other without consent. Section 55 of the old law permitted a person liable for the support of a child to take out a policy of insurance upon its life. This Section of the Code permits any person having an insurable interest in the life of the child to take out such a policy within specified limits as to amount of insurance.

Section 149 is a section which attempts to write into statutory language the effect of judicial rules on the subject of misrepresentations, developed by our courts under Section 58 of the old law. As those decisions have so material a bearing on the language of this new Section, I shall defer my consideration of the new statutory language until I come to consider the case material.

Section 155 is the standard provision section for life insurance policies. It contains several minor changes from the existing law. Probably the most significant change is one in the interest of clarification and is to be found in the provision with respect to reinstatement which has been changed to read that the policy may be reinstated "upon the production of evidence of insurability, *including good health*, satisfactory to the insurer, etc." Here the Legislature has written into the statute the decision in *Kallman* v. *Equitable*.[2] That was the case which decided that in passing upon the application for reinstatement, the insurer could take into account not only the physical condition or good health of

[2] 248 App. Div. 146; *aff'd.* 272 N. Y. 648.

the applicant but could also apply to him the other tests for insurability that you would apply on an original application. In this particular case, the item involved was the financial condition of the man, and the courts finally held that "upon the production of evidence of insurability" included financial condition as well as good health. The inclusion in the statute of the phrase "including good health" indicates more clearly that the word "insurability" embraces other considerations than mere good health.

In Section 161 various changes have been made in the standard provisions required in group life insurance policies. The most important of these changes have the effect of adding to the circumstances under which an employee insured under a group life insurance policy may convert to regular insurance without medical examination. In this way the problem of the employee who has become uninsurable while enjoying group coverage is made easier.

Section 163, in prescribing for the first time in this state standard provisions for industrial life insurance policies, has somewhat liberalized the benefits heretofore provided under such policies.

Section 166 deals with the exemption of life insurance policies, annuity contracts and disability benefits from the claims of creditors. Subdivision 1, which relates to life insurance policies seems to have preserved and in some respects clarified the exemptions developed under Section 55-a of the old law.

Subdivision 2 somewhat narrows the exemption as to disability benefits by providing that with respect to debts or liabilities incurred after the commencement of disability, the exemption of income benefits payable by reason of the insured's disability is not to exceed payment at the rate of $400 per month.

Subdivision 3, relating to annuity contracts, modifies the exemption provided for under Section 55-c of the old law by limiting the total exemptions to an annuitant to $400 per month, which amount is subject to garnishment, and providing that the court may order the payment to judgment creditors of any part of the excess beyond $400 to the extent it shall be deemed by the court to be just and proper, having "due regard for the reasonable requirements of the judgment debtor and his family, if dependent on him".

Examples of miscellaneous legislation intended to benefit the policyholders of this state is to be found in Section 114 of the new Code, which stiffens the requirements as to licensing agents, by making them pass writen examinations, and also in Article VI-A of the Banking Law (formerly Article IX-D of the Code), which covers the subject of Savings Bank Life Insurance. Neither piece of legislation has as yet developed any questions necessitating judicial interpretation.

Serious questions of law have arisen, however, in connection with our recent unclaimed funds legislation. In New York we have had legislation for some years providing for the escheating to the state of "abandoned funds" of savings bank depositors and deposits left with public utility companies.[3]

In 1939 the first statute was passed purporting to escheat unclaimed funds of life insurance companies. Chapter 923, Laws of 1939, which became Article IX-E of the Insurance Law, effective

[3] See BANKING LAW, Sections 274, 274-a, TRANSPORTATION CORPORATIONS LAW, Sections 13-a, 13-b.

June 17, 1939, required domestic life insurance companies to report to the superintendent of insurance and to pay over to the state comptroller "unclaimed funds" held by them. Unclaimed funds were defined as (1) funds due under matured policies; (2) reserves on policies operating under non-forfeiture provisions for more than four years without affirmative election or its equivalent by the person entitled to make the election; (3) reserves on policies under which the insured would have attained the age of 100 years regarding which there had been no dealings for ten years; and (4) reserves on annuity contracts regarding which no claim had been made for seven years since a payment was due.

The features of this statute which were principally objectionable were its attempt to regulate individuals and subjects not within the jurisdiction of the laws of this state, to deprive policyholders and beneficiaries of existing contract rights, and its failure to take cognizance of the actuarial principles on which life insurance policies and annuity contracts are based. The attempt to effect the rights of non-resident policyholders raised particularly troublesome questions of constitutional law.[4]

After the law became effective, an action was brought in the name of the New York Life Insurance Company for a declaratory judgment that the statute was unconstitutional and for a permanent injunction restraining its enforcement. A temporary injunction was granted,[5] but before a final hearing was held the statute was repealed in April, 1940, by Chapter 602 of the laws of that year, which also replaced it by a new Article IX-E of the Insurance Law—the present law. The *New York Life* action was then disposed of by the entry of an order of discontinuance.

The present law applies only to domestic companies, but in its operation affects only amounts of $10 or more due for more than seven years, to residents of this state. Such amounts are deemed to be unclaimed funds only if they are (1) amounts due under matured endowment policies issued on the lives of residents of this state; (2) amounts due under any kind of policy issued on the life of a resident where the insured, if living, has attained the limiting age under the applicable mortality table; and (3) amounts due to beneficiaries residing in this state.

The latest legislative innovation introduced into the New York Insurance Law is to be found in Chapter 481, Laws of 1941, creating The Life Insurance Guaranty Corporation. This is a non-profit organization, organized without capital stock, consisting of the superintendent of insurance, ex-officio, and one representative of each life insurance company incorporated under the laws of the State of New York. It was created with the power to assume, reinsure or guarantee the performance of insurance policies and annuity contracts of any impaired or insolvent domestic life insurance company. The funds which may be required in order to carry out the purposes of the corporation are to be provided by assessments which may be made from time to time upon domestic life insurance companies in proportion to their admitted assets. Up to the present time the powers of the corporation have been exercised with respect to one domestic company.

[4] See Equitable v. Clements, 140 U. S. 226; Mutual Life v. Cohen, 179 U. S. 262; Mutual Life v. Liebling, 259 U. S. 209.

[5] See New York Law Journal, December 21, 1939.

After this brief reference to some of the more important changes in substantive law effected by the Code, as to most of which there has been as yet no judicial interpretation, I pass now to the case material some of which also involves statutory provisions.

Misrepresentation

An analysis of the decisions relating to misrepresentation indicates that the courts of this state have become increasingly aware of the extent to which the companies in underwriting their risks are dependent upon a reasonably full and complete disclosure by the applicant of the material facts as to his health and medical history. As this awareness has grown, the courts seem to have held the applicant to an increasingly high degree of responsibility for disclosing the material facts. The evolution of this point of view centers about the interpretation of Section 58 of the old Insurance Law which came into being in 1906. You will recall that Section provided that all statements purporting to be made by the insured should, in the absence of fraud, be deemed representations and not warranties. Since under familiar principles of insurance law only a material misrepresentation would avoid the policy, the courts were soon faced with the necessity of deciding what would be held *as a matter of law* to constitute either *prima facie* or conclusively a material misrepresentation in various circumstances.[6] Illustrations of the different situations from which the courts have developed their rules as to what will be regarded as *material representations as a matter of law*, either *prima facie* or conclusively, will be found in *Travelers* v. *Pomerantz*;[7] *Keck* v. *Metropolitan*;[8] *Jenkins* v. *John Hancock*[9] (cases involving failures to disclose previous medical treatment or consultation with physicians); *Anderson* v. *Aetna*[10] and *Prusak* v. *John Hancock*[11] (cases in which it was shown that the applicant had visited a physician for the purpose of having X-ray examinations made). Most of these cases are summarized and fully discussed in *Geer* v. *Union Mutual*,[12] which is now the leading case in this state on the question of material misrepresentation. In this case the insured answered "no" to the question, "Have you had any treatment within the last five years at any dispensary, hospital or sanatorium?" Also in his answer to the question "Give name and address of each physician consulted by you during the past ten years and cause for consultation", he failed to mention that four years prior to the date of the application he had consulted a physician who diagnosed his case as para-typhoid, sent him to the hospital for two weeks and treated him for two months after discharge from the hospital. The trial court let the case go to the jury and a verdict was given to the plaintiff. The Appellate Division affirmed the judgment entered upon the verdict. The case was then appealed to the Court of Appeals. The Court of Appeals reversed the judgment of the lower court and dismissed the complaint. The majority opinion was written by Judge Lehman who, after stating the question before the court to be whether it conclusively appeared that there was material misrepresentation, then stated

[6] See Eastern District P. D. Works, Inc. v. Travelers, 234 N. Y. 441.

[7] 246 N. Y. 63.
[8] 238 App. Div. 538, *aff'd.* 264 N. Y. 422.
[9] 257 N. Y. 289.
[10] 265 N. Y. 376.
[11] 261 App. Div. 218.
[12] 273 N. Y. 260.

the substance of the conclusion that there was such a material misrepresentation as follows:

"The salient features of the problem presented in this case are these: The insurance company did not agree that a jury might decide what risks the company should accept. It reserved that choice to itself, and in order to determine whether in a given case it should exercise that choice, it required certain information of each applicant. Here the applicant gave erroneous information, and the insurance company acted upon the information it received. If the truth had been disclosed it might perhaps have rejected the application or it might have accepted it. No person can say with any degree of certainty what action it would have taken, but it cannot be doubted that the erroneous statement deprived the company of its freedom of choice and that it acted upon a statement of facts which did not exist and if the truth had been disclosed, it might, reasonably, have acted differently. It follows then that the representation was material as matter of law."

Another case of interest on this subject is *Polacheck* v. *New York Life*,[13] in which it was held that a misrepresentation was material as a matter of law when a plaintiff by a claim of privilege under the provisions of Section 352 of the Civil Practice Act closed the door to the development by the insurance company of the nature of the disease or disorder from which the insured suffered.[14]

As has been previously stated in our consideration of the provisions of the new Code, the Legislature by enacting the provisions of Section 149 of that Code has attempted to restate the law applicable to misrepresentation. A careful analysis of the language of that section indicates that it follows very closely the pronouncements of the courts in the various cases to which we have referred. Subdivision 1 defines a representation and a misrepresentation. Subdivision 2, Section 149 provides:

"No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless such misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to refusal by the insurer to make such contract."

This is substantially the test laid down in *Denler* v. *Continental Casualty Co.*,[15] and also seems to follow the rule enunciated by Judge Lehman in *Geer* v. *Union Mutual* wherein he stated that ". . . any untrue representation, however innocent, whether either by affirmation of an untruth or suppression of the truth substantially thwarts the purpose for which the information is demanded and induces action which the insurance company might otherwise not have taken, is material as a matter of law". The important point to be noted is that the statutory test is not the effect of the representation on a reasonable or prudent insurer, but rather upon the insurer which acted upon the representation. It should also be emphasized that the test laid down as to materiality is whether knowledge by the insurer of the fact misrepresented would have led to a refusal by the insurer to make such contract; and not whether the facts misrepresented substantially increased the chances of happening of the loss insured against.

Subdivision 3 provides that in determining the question of materiality, evidence of the practice of the particular insurer with respect to the acceptance or rejection of similar risks shall be admissible, and this removes any doubt as to whether the insurer can introduce evidence as to its own practice with respect

[13] 151 Misc. 172.
[14] See also the *Anderson* and *Keck* cases, *supra*.
[15] 213 App. Div. 30.

to writing contracts on risks of the class that is the subject of the particular litigation.

Subdivision 4 attempts to clarify the existing law with respect to one of the most common kinds of misrepresentation. It provides that a misrepresentation that an applicant has not had previous medical treatment, consultation or observation, or has not had previous treatment or care in a hospital or other like institution, shall be deemed, for the purpose of determining its materiality, a misrepresentation that the applicant has not had the disease, ailment or other medical impairment for which such treatment or care was given or which was discovered by any licensed medical practitioner as a result of such consultation or observation. Furthermore, a provision is added to the effect that, if in an action to rescind a policy or to recover thereon, any such misrepresentation is proved by the insurer, and the full disclosure or proof of the nature of such medical impairment is prevented by a claim of privilege, then the misrepresentation shall be presumed to be material.

Here the statute follows the opinion in *Anderson* v. *Aetna, supra,* as to the requirement for a disclosure of medical treatment, *Geer* v. *Union Mutual, supra,* and *Apter* v. *Equitable,*[16] as to consultation, *Coelho* v. *Prudential,*[17] as to medical care in hospitals and the last sentence of the subdivision is a statement of the rule laid down by the courts in *Polacheck* v. *New York Life, supra,* and the *Anderson* and *Keck* cases, *supra.*

It is interesting to note that it has recently been contended in one case which has arisen since Section 149 became effective, that that Section changed the law so as to make the question of materiality of a misrepresentation wholly a question of fact for the jury to decide.

This contention was advanced in the case of *Kuritzky* v. *National Casualty Co.*[18] The trial court, which was the City Court of Peekskill, after stating that prior to the Code "proof merely of a misrepresentation (if it was not an obviously trivial one) was sufficient to establish a *prima facie* case of material misrepresentation", citing the *Pomerantz* and *Keck* cases, then said "The new enactment (by which it meant the Code) seems, however, to have changed this rule". It then said:

> "Under the present rule, therefore, it would seem that where the insured does not prevent or hinder full disclosure of the facts, the burden is on the insurer to establish materiality by something more than the fact of the misrepresentation itself; by proof, including its practice in the acceptance and rejection of similar risks, that it would have refused to make the contract had it known of the misrepresented fact. This presents a question of fact."

Holding that the defendant had failed to meet this new burden of proof prescribed by the Code, the trial court entered judgment for the plaintiff. On appeal to the Appellate Division, Second Department, the judgment was reversed and the complaint dismissed.[19] In a *per curiam* opinion the court said, after referring to the facts which constituted the misrepresentation,

> "Plaintiff's failure to disclose these facts prevented the defendant from investigating to determine whether it would accept the risk and issue the policy. The misrepresentation or suppression of information was material as a matter of law."

[16] 246 App. Div. 654, *aff'd.* 271 N. Y. 653.
[17] 257 App. Div. 398.
[18] 23 N. Y. S. (2d) 776.
[19] 261 App. Div. 1083.

Apparently, therefore, that court still regards the *Geer* case as the law.

A similar question seems to have been raised but not passed upon in *Sachs* v. *Penn Mutual*.[20]

Double Indemnity

Double indemnity provisions of life insurance policies ordinarily provide for coverage in the event of "death resulting from bodily injuries effected solely through external, violent and accidental means". This language has been the source of a great amount of litigation which, viewed in retrospect, seems to have contributed relatively little to the clarification of the fundamental question of interpretation involved in such phraseology.

At one end of the road we had the *Appel* case,[21] in which the following state of facts was involved. At about 3:30 o'clock in the afternoon of August 26, 1901, in the City of Rochester, Joseph M. Appel, "an experienced bicycle rider" who was "apparently in his usual health", took an uneventful ride on his bicycle. He rode until five oclock. About 8:30 that evening he complained of soreness in his abdomen and during the night suffered great pain. The next day he was operated upon and the operation disclosed a rupture of the appendix which resulted from the friction of his muscles against his appendix. Three days later he died. The Appellate Division found that the appendicitis was caused by the bicycle ride and said:

> "Our attention has not been called to any case which holds, and we have failed to discover any authority for the proposition, that a result which is produced by means, all of which and every detail of which was intended, can be said to have been produced by accidental means, simply because the result which followed the employment of such means, exactly in the manner intended, was different from the result anticipated."

At the other end of the road, we have the *Mansbacher* case.[22] In that case the insured suffered from an earache. To relieve the pain he took a dose of veronal. He took an overdose and died as a result. The trial court found as a fact that the taking of the overdose was not intentional. The plaintiff was successful in the trial court and the judgment was affirmed by the Court of Appeals. In holding that the death was within the coverage, the court said, in part, after referring to the finding of the trial court that the taking of the overdose was accidental and also to the emphasis which the typographical lay-out of the policy placed upon the words "Accidental Death Benefit":

> "Accidental death means death by accident, and excludes suicide; death occurring through 'accidental means' in this case and under these circumstances is the same as death occurring 'by means of an accident'."

In discussing the facts the opinion said:

> "Her husband intended to take veronal but never intended to take a lethal dose, nor did he intend to take enough to do him any harm; he desired to get relief from pain, not relief from life. He took too much veronal: it was a mistake, a misstep, an unexpected effect from the use of prescribed medicine. It was an accident, and must have been an accident unless it was intentional . . ."

This opinion has been widely cited and quoted for an equally wide variety of purposes. Beneficiaries have contended that the decision of the court in the *Mansbacher* case meant that there

[20] 28 N. Y. S. (2d) 1016.
[21] Appel v. Aetna, 86 App. Div. 83, *aff'd.* 180 N. Y. 514.
[22] Mansbacher v. Prudential, 273 N. Y. 140.

was no longer any distinction in this state between accidental death and death caused by accidental means.

On the other hand it will be noted that the finding by the trial court that the act was not intentional necessarily left the inference that something unintended had happened. Of course, the taking of the veronal was intended. But as the Court of Appeals points out, the taking of that fatal quantity was not intended. Is that fact sufficient to square this decision with the *Appel* decision? There is some indication that we can answer this in the affirmative in the fact that the court pointedly refrained from overruling the *Appel* case but distinguished it on the facts, saying that in that case death was not due solely to bodily injuries, independent of other causes.

To add further confusion to this subject, we have the *dictum* of the Circuit Court of Appeals for the Second Circuit in *Simpson* v. *Travelers*,[23] to the effect that no general distinction has ever been recognized by the New York Court of Appeals between "accidental means" and "accidental result" for purposes of such double indemnity provisions.

To illustrate the difficulty involved in trying to interpret the language of the *Mansbacher* decision it is only necessary to look at two cases which have been decided subsequently involving this question of accidental means.

The first of these is *Bennett* v. *Equitable*.[24] There the Appellate Division, First Department, unanimously affirmed without opinion a determination of the Appellate Term, First Department.[25] The deceased in that case had died from a pulmonary embolism occurring after an operation for an inguinal hernia. The Appellate Term said:

> "The insured's death did not occur as a result of bodily injury effected solely through external, violent and accidental means, *Mansbacher* v. *Prudential*, 273 N. Y. 140, and *Berkowitz* v. *New York Life Insurance Company*, 256 App. Div. 324, are not here controlling, as in those cases, the causes were trivial and were followed by some unforeseen, unexpected, extraordinary and unlooked-for mishap. Here, however, death ensued as a result of post-operative pulmonary embolism. In such event, the cause was neither trivial nor the result unforeseen."

The second is *Powley* v. *Equitable*.[26] Here the trial court found that the death was due to "the accidental use of excessive alcohol". The Appellate Division, First Department, which court decided the *Mansbacher* case and whose decision was affirmed by the Court of Appeals in the *Mansbacher* case, in its opinion first reviews the *Mansbacher* case and then states:

> "Where, as in this case, an assured consumes an amount of alcohol sufficient to cause acute alcoholism and dies as a result thereof, we are of the opinion that the death does not occur through 'accidental means' or 'by means of an accident'."

It will be seen that apparently both the Appellate Term in the *Bennett* case and the Appellate Division in the *Powley* case did not feel that the *Mansbacher* and *Berkowitz* cases had abolished the requirement of "accidental means".

It is possible that some further clarification will be given this question when the Court of Appeals passes upon the case of *Simson* v. *Commercial Travelers Mutual Accident Association*, which was decided by the Appellate Division, First Department.[27] That case involved a

[23] 121 F. (2d) 683.
[24] 261 App. Div. 819.
[25] 13 N. Y. S. (2d) 540.
[26] 257 App. Div. 324, *aff'd.* 284 N. Y. 664.
[27] 32 N. Y. S. (2d) 615.

claim for disability benefits for disability which resulted from a hernia suffered as the result of unusual exertion while the insured was opening a desk drawer. The trial court set aside a verdict for the plaintiff and dismissed the complaint on the ground that the injury was not caused by violent, external and accidental means. The Appellate Division, in reversing, said that:

> "The occurrence clearly falls within the causes defining accidents from violent, external and accidental means."

An appeal from this judgment is now pending in the Court of Appeals.

Disability

One of the most fruitful sources of litigation in the insurance field is to be found in the disability clauses issued as a part of or in connection with life insurance policies. The problems of administration which such clauses have created for the companies are comparatively difficult, for while it is generally a simple enough matter to determine whether a policyholder is totally and permanently disabled, it is not always so easy and in many cases quite impossible to determine whether a policyholder is alive or dead.

In the administration of claims arising under such clauses the companies try to reach decisions only after weighing all the evidence. There are, of course, bound to be borderline cases giving rise to differences of opinion which must be resolved by the courts, but these are surprisingly few when considered in the light of the total number of claims passed upon. While the companies are criticized from time to time for their failure to take account of all the facts alleged to exist with respect to such claims, I think it is only fair to say that we frequently encounter cases in which the claimant's lawyers have not ascertained all the facts before resorting to litigation. As an illustration of this I might cite the case of *Siff* v. *Travelers*,[28] where, although the policyholder claimed he was totally and permanently disabled, the company was able to show that he was (1) financial secretary of an American Legion Post, (2) operated an automobile parking lot, (3) was employed as a special police officer for compensation, (4) drove an automobile under a chauffeur's license, (5) competed in bowling and soft baseball league competition, and (6) frequently marched in parades beating the drum in the band. Needless to say, the court did not disagree with the company's judgment in disapproving the claim.

The first essential element which must exist to support a disability claim under the clauses issued by most companies is that the disability must be total, and total disability is usually defined as inability to perform any work or engage in any occupation for wage or profit. The primary rule which New York courts have said should be applied in the application of this language is that the words "total disability" must be interpreted as they would be understood by the ordinary businessman and must be given the meaning which they have in common thought and in common speech.[29]

In passing upon the question whether total disability exists as a matter of law, an apparent conflict existed for some time between the Appellate Divisions of the First and Second Departments respectively, the former adopting the language of the policy as the test of total

[28] 162 Misc. 696.
[29] See Sosknowski v. Aetna, 257 App. Div. 1035.

disability, and the latter appearing to interpret the policy language almost to the point of turning it into a provision insuring against inability to follow the particular occupation in which the insured had been trained and customarily worked.

In 1934 the case of a manager of a grocery store who suffered an injury to his hand and arm came before the Appellate Division, First Department.[30] That court held that this insured was "not prevented from engaging in any occupation or employment for wage or profit". There were two policies involved in that case, one insuring against inability to follow "his" occupation, and the other requiring the claimant to be totally disabled from following *any* occupation. In distinguishing between the two types of clauses the court held that the insured clearly was not prevented from following many types of employment and dismissed his cause of action under the policy containing the *"any* occupation" clause. The same line of reasoning was followed by the First Department in *Finkelstein* v. *John Hancock,*[31] and *Steingart* v. *Metropolitan.*[32] These three cases illustrate the interpretation of total disability in the First Department.

Arico v. *Prudential*[33] is illustrative of the different interpretation apparently adopted by the Second Department in 1934. Arico, the operator of a macaroni mixing machine, lost an arm. Since he needed both arms to operate the machine he of course could no longer perform his usual work. In allowing benefits the Appellate Division in a memorandum opinion held that "wholly and permanently unable to engage in any occupation or perform any work for any kind of compensation of financial value" meant the plaintiff's inability to carry on the occupation in which he had been trained and worked during all his working life, namely, that of a worker at a macaroni mixing machine, or employment in work of the same general character where he could be gainfully employed in an occupation reasonably comparable in type and remuneration to that in which he was employed at the time of the accident.

What then was the law in New York? The Appellate Division in the First Department had held that *"any* occupation" meant just that, provided it was a "gainful occupation". The Second Department had held that "any occupation" meant "the claimant's occupation" or "work of the same general character reasonably comparable in type and remuneration." The apparent conflict was finally disposed of in the case of *Waldman* v. *Mutual.*[34]

The trial court in the *Waldman* case[35] had charged the jury in the language of the *Arico* case. The Appellate Division of the Second Department held the charge to be erroneous and said that the total and permanent disability contemplated by the policies is such as prevents the insured from following *any* substantial or remunerative occupation or from doing *any* labor for which he is fitted or qualified mentally and physically and by which he is able to earn a livelihood. In deciding this case, the Appellate Division indicated that the *Arico* case was predicated on a record of an inconclusive

[30] Garms v. Travelers, 242 App. Div. 230, *aff'd.* 266 N. Y. 446.
[31] 247 App. Div. 74.
[32] 249 App. Div. 114.
[33] 241 App. Div. 826.
[34] 252 App. Div. 448.
[35] Waldman v. Mutual, 252 App. Div. 448.

character, and should be confined to the particular facts involved there.

Therefore the law in both the First and Second Departments now seems to be that in order to establish total disability the claimant must show that his disability is of such a character as to prevent him from engaging in a remunerative occupation, as that phrase is ordinarily understood, or to do work in some profitable employment or enterprise.[36]

The next question which arises under the clauses customarily issued by the companies is as to whether the disability is permanent. The courts of this state have given the term "permanent disability" a reasonable meaning. In *Silverstein* v. *Prudential*,[37] it was said that an obviously transient or temporary disability could not be considered permanent—but that where the proof justifies a deduction that the claimant will not recover, or that the time of such recovery is so far removed into the future that the end of the disability cannot be foreseen then the condition must be considered permanent.

The difficulty in the interpretation to be given the term "permanent" arises from the great body of illnesses, which our brothers in the medical profession can cure. With further advances in medical research and study, cures may be found for many illnesses presently considered incurable. In deciding whether a disability is permanent or not we must look for guidance to the medical profession, but the doctors themselves do not claim infallibility. Unanticipated recoveries may follow the most critical ailments—and conversely death sometimes ensues where medical experts confidently predict complete recovery. The only sure way to determine permanency is in retrospect after a claimant has breathed his last. As a practical matter, however, the decision cannot be deferred indefinitely in order to watch the course of the condition. The company must decide within a reasonable time in the light of the available evidence whether the condition is likely to be permanent.

It is evident from what has been said that satisfactory proof of permanency is extremely difficult to furnish in many cases. To remedy the difficulty, as already indicated, a clause was introduced by many companies in 1921 whereby total disability existing for some specified duration (such as three months) was deemed to be permanent. Thus permanency was *presumed* in the case of a continuing total disability of indeterminate duration after it had existed for the required period. This presumption clause, however, gave rise to another problem. Where a claimant had recovered from a disability that had existed sufficiently long to raise the presumption of permanency, was he entitled to disability benefits or not?

In the *MacKenzie* case,[38] which was decided in 1931, the policy provided for benefits in the event of total and permanent disability and stated that "total disability shall be presumed to be permanent when it is present and has existed continuously for not less than three months". The claimant had suffered a disability lasting for more than three months but had concededly recovered at the time the claim was presented. In denying disability benefits the court held that the policy did not contemplate payment of benefits for a temporary disa-

[36] See Shabotzky v. Equitable, 257 App. Div. 257, *motion for leave to appeal or for a reargument denied*, 257 App. Div. 957.

[37] 246 App. Div. 359.

[38] MacKenzie v. Equitable, 140 Misc. 655.

bility; that the presumption clause was to be invoked only when doubt existed as to whether the disability was permanent; and that the claimant's admission that he had recovered from his disability at the time his claim was presented was therefore fatal to his cause of action.

As I have stated, disability clauses generally require the existence of either a total and *permanent* or *presumably permanent* disability. Note that word "presumably" because it makes a difference. In the case of *Finkelstein* v. *Equitable* decided in 1939,[39] the claimant brought suit for disability benefits under a number of policies, some of which required total and *permanent* disability and others total and *presumably permanent* disability, but all containing a provision whereby permanency was presumed after existence of total disability for a specified time. The court there held that a definite legal distinction must be drawn between the two types of coverage. Where the policy insures only against a total and *permanent* disability the court stated that the claimant must establish permanency. If he had recovered from his disability it follows that his condition could not have been permanent and any presumption of permanency that may have existed would necessarily be rebutted by his recovery so that he would not be entitled to disability benefits. On the other hand, where the policy insures against a total and *presumably permanent* disability, the court held that once the presumption of permanency was established it became conclusive and irrebuttable and even though the claimant had recovered from his disability, benefits were payable for the period during which he was disabled.

[39] 256 App. Div. 593, *aff'd.* 281 N. Y. 690.

Bearing somewhat on this question of permanency it is of some interest to consider briefly a related matter, namely, whether a policyholder is under any duty to submit to medical treatment or an operation to ameliorate his condition and hasten a recovery. You are familiar with the general rule in tort and workmen's compensation cases that a claimant must act reasonably to minimize his disability. In this state there has been some carry-over of this idea to disability insurance. In *Finkelstein* v. *Metropolitan*,[40] disability benefits were denied to a claimant who refused to submit to a hernia operation although it was recommended by his doctors and there was expert testimony that an ordinarily prudent man would have the hernia repaired by surgery. The decisions do not impose a duty on a disability claimant to submit to a critical surgical operation necessarily attended by risk of failure or death but he evidently is expected to submit to simple and safe surgery and medical treatment and otherwise exercise good faith in his efforts to effect a cure.

In this review of the legal highlights and developments in the field of disability insurance a trend toward a reasonable construction of the coverage may be discerned. In controlling the charge to the jury, the appellate courts have tried to give effect to the policy language without undue distortion. Of paramount importance, however, is the fact issue which in the last analysis remains within the sole jurisdiction of the jury.

In conclusion it should be noted that it is now clearly established under the law of this state that a disability clause issued in connection with a life insurance policy is contestable when excepted

[40] 152 Misc. 439 *aff'd.*, 243 App. Div. 686.

by proper language from the operation of the incontestability clause even though the policy itself has become incontestable.[41]

The operation of the disability clause illustrates the defects of legal language in the hands of any lay draftsman even though he happens to be an actuary. The actuaries thought when they devised the disability clause that they were confining the risk assumed commensurate with the premium charged. They did not intend to assume the risk of the unemployment insurance which many claimants seemed to think the clause included. Indeed, judicial interpretation supplemented by jury findings have, I think, demonstrated even to the actuaries, that their clauses ought to be drawn by their lawyers in future and that the lawyers might even give them some guidance on the subject of rates. If in the circumstances of a particular case you sometimes think the disability clause has been narrowly interpreted, let me assure you that the interpretation which it has received has resulted in a cost to the companies far in excess of anything the actuaries contemplated. And if this result seems to you to illustrate a desirable application of the general judicial decision interpreting contractual language strongly against the insurance company, let me remind you that most of this business is conducted by mutual companies whose policyholders ultimately bear the financial burden of claims of a type not contemplated when premiums were fixed.

Dividends

The truth of the foregoing assertion is well illustrated by decisions of the New York courts in recent years in several cases involving dividends of mutual life insurance companies. As to general principles, the decisions make it clear that the courts regard each company's officers and board of directors as having the primary responsibility for the determination of the amount of the contingency surplus and the amount and method to be used for distributing its divisible surplus to policyholders. Accordingly, the courts will not unnecessarily interfere with the exercise of their discretion with respect to these problems. *Prima facie*, the actions taken by boards of directors of these companies with respect to such matters will be regarded by the courts as in compliance with the terms of the dividend section of our Insurance Law and of the policy provisions issued in conformity therewith. So long as the directors exercise good faith and there is no allegation of fraud, wilful neglect, or wilful abuse of discretion, their determination of these matters of equity will be regarded by the courts as final. Furthermore, since the New York statutes require that the apportionment of surplus shall be "equitable", the courts will not permit mere differences in the form of the policyholders' contracts or minor points of phraseology to interfere with the distribution of surplus on broad equitable principles.

Most of these principles applicable to the dividend practice of mutual companies became established in the law of this state many years ago.[42] The principles have been reapplied by our courts more recently in the following cases:

[41] See Equitable v. Volk, 256 App. Div. 348; Equitable v. Deem, 91 Fed. (2d) 569, *cert. denied* 302 U. S. 744.

[42] See Greeff v. Equitable, 160 N. Y. 19; Equitable v. Brown, 213 U. S. 25; Buford v. Equitable, 98 N. Y. 152; and Uhlman v. New York Life, 109 N. Y. 421.

Rhine v. *New York Life.*[43] In that case the plaintiff sued on behalf of herself and all other policyholders similarly situated for greater dividends than those apportioned to her policy during the years 1931 to 1935. The plaintiff held policies of life insurance which also provided for disability benefits. She maintained that the company discriminated inequitably and unlawfully between holders of policies providing only life insurance and holders of policies providing for both life insurance and disability benefits. The company had put these two types of policies into different classes for dividend purposes. At one time policies containing disability benefits had received higher dividends than similar policies without those benefits. Later the dividends were the same. In 1931 the Board of Directors of the company decided that the policies with disability benefits were not contributing to divisible surplus to the same extent as similar policies without disability features and that some correction with respect thereto was necessary. In the exercise of their discretion, therefore, smaller dividends were thereafter apportioned to these policies. The plaintiff contended that the disability feature constituted a separate contract for which a separate and additional premium was paid and that the life insurance coverage was another contract no different than any other policy without the disability benefit. On this premise she concluded that the company was not justified in placing life insurance coverages with additional disability benefits in a dividend class separate from similar policies without those benefits.

The Appellate Division of the First Department, to which the case was submitted on an agreed statement of facts, held that the policy in question was one agreement, a single contract, with both death and disability benefits so interwoven as to constitute a single integral insurance contract. Therefore, when the company treated the policy as a whole in determining for dividend purposes whether there was a contribution to surplus it violated no contractual or statutory duty. To succeed in her contention the plaintiff had to show that the principle on which the apportionment was based was *so clearly erroneous as to be beyond the exercise of any reasonable discretion on the part of the Board of Directors.* The court reiterated the principle, citing the *Uhlman, Greeff* and *Brown* cases, that the apportionment, as made by the company, must be regarded *prima facie* as an equitable apportionment, and the plaintiff must allege and prove facts showing that the apportionment was not equitable or was based upon erroneous principles, and in the absence of any allegation of wrongdoing or mistake, the directors' determination of the question must be treated as proper. The Court of Appeals affirmed with an opinion approving the foregoing principles.

Then in 1937 came *Rubin* v. *Metropolitan Life.*[44] This was also a representative action in which the plaintiff sought to obtain greater dividends by distinguishing the *Rhine* case on the theory that the disability benefit portion of the coverage was contained in a "supplementary contract" attached to and made a part of the policy, whereas in the *Rhine* case the disability provisions were an integral part of the policy. The

[43] 248 App. Div. 120, *aff'd.* 273 N. Y. 1.

[44] 251 App. Div. 382.

Appellate Division held that the distinction was one of form only, as the life insurance policy together with the "supplementary contract" constituted a single instrument, both by physical union and by effect. The plaintiff's contention was rejected by the Appellate Division on the authority of the *Rhine* case and its decision was affirmed by the Court of Appeals.[45]

A third case of this same type was *Sahadi* v. *Equitable,* decided in 1938.[46] Again the plaintiff was the holder of a policy providing for disability benefits, on which, however, a claim was being paid. This policy was placed in a class wherein smaller dividends were allowed than on similar policies under which claims were not being paid. At the end of the policy provision pertaining to the disability benefits there appeared a note to the effect that any premiums waived and any disability-annuity paid should not be deducted from any amount payable in any settlement of the policy. Plaintiff claimed that the basis of apportioning dividends to his policy violated its terms because the allowance of smaller dividends was in effect a reduction in "potential settlements" and a discrimination against him. The Appellate Division affirmed the judgment of the Supreme Court for the company, thus holding that the provisions of the policy other than the clause relating to annual participation did not affect or limit the discretion of the Board of Directors.

In 1939 the Appellate Division decided still another representative action —*Barnett* v. *Metropolitan Life.*[47] Here the policy provided for disability and accidental death benefits by rider forms physically annexed to the policy. The plaintiff contended that the company had accumulated many millions of dollars constituting profits on accidental death benefits and had placed this money in its contingency reserve fund instead of paying it out as a part of its divisible surplus. The company contended that its experience had shown that it did not have adequate reserves for its double indemnity coverages and that these reserves had to be increased through the use of contingency surplus funds. The company further contended that the contingency surplus thus depleted had to be restored and added to by the contributions of policies with accidental death benefits. Also, the company asserted that in a comparatively new line of business, such as that involving accidental death benefits, it should build up and hold an adequate contingency surplus until a true trend of such claims could be established through actual experience.

The Appellate Division sustained the company's contentions, and held that the directors had the right in their discretion to declare and pay the same dividends upon life insurance policies with a provision for accidental death benefits as it declared and paid upon identical policies without any such provision. The Court of Appeals affirmed without opinion.[48]

In concluding this discussion of the dividend cases, I wish to refer to a series of cases which, while they do not arise under our New York law, are of vital practical importance to New York policyholders of our domestic companies. These are the cases in which policyholders of such companies who are residents of other states bring suit in the

[45] 278 N. Y. 625.
[46] 254 App. Div. 850, *leave to appeal denied* 255 App. Div. 702, 278 N. Y. 742.
[47] 258 App. Div. 241.
[48] 285 N. Y. 627.

states of their residence and try to get the courts of those states to render judgments with respect to the dividend practices of our New York companies. Where such courts are willing to assume jurisdiction of such cases, a very serious problem arises because of the requirement of the New York law that each company must distribute its divisible surplus uniformly to policyholders of the same class. A domestic company cannot comply with this requirement and at the same time follow one method of distributing surplus to policyholders in New York and another to policyholders of Connecticut and New Jersey. The essential difficulty in solving such a problem was recognized by the Court of Appeals in the case of *Sauerbrunn* v. *Hartford Life*.[49] It is not always easy, however, to convince the courts of other states that they should refrain from consideration of the dividend practices of our domestic companies.

When faced with the problem of taking jurisdiction over cases involving the dividend practices of our domestic companies, the courts of other states are faced with three alternatives: (1) to hold that they have no jurisdiction over the problems involved; (2) to hold that they *have* jurisdiction, but as a matter of policy or comity will not exercise it; and (3) to assume jurisdiction and deal with the problems on their merits. A complete discussion of this problem and of the various cases which reveal the attitude of the different courts toward it may be found in *Ellis* v. *Mutual*, decided in 1939 by the Supreme Court of Alabama.[50] There the court sustained a refusal to assume jurisdiction on the ground that it should not undertake to interfere with or control the management of the internal affairs of a foreign corporation.

[49] 220 N. Y. 363.
[50] 187 So. 434.

Annuities

In recent years there has developed a growing interest on the part of the public in annuity contracts issued by life insurance companies, and a consequent increase in the number of such contracts sold by the companies. These annuity contracts provide that for the consideration stated therein the insurance company will pay to the annuitant a stipulated income at periodic intervals so long as the annuitant shall live. Cases have arisen in which the annuitant, after purchasing an annuity contract, died shortly thereafter, having received back in the form of annuity payments none or only a relatively small portion of the entire consideration paid for the contract. Suits have been brought by representatives of the estates of several such annuitants to rescind the transactions.[51] In all of these cases it was held that there could be no action for rescission even though the annuitant was a sick man when he bought the contracts. To the same effect see *Davis* v. *Equitable*;[52] also *McGrew* v. *Mutual*,[53] involving a joint and survivor annuity contract upon the lives of a man and his wife.

These cases indicate the rule in this state to be that an annuity consideration charged by the insurer and based on standard mortality tables is *prima facie* fair: that the contract is not lacking in mutuality merely because of the annuitant's early death; that there is no duty

[51] See Woodworth v. Prudential, 171 Misc. 585, *reversed* 258 App. Div. 103, *aff'd. without opinion* 282 N. Y. 704; Woodworth v. Connecticut Mutual, 27 F. Supp. 732; Woodworth v. Travelers, memorandum opinion N. Y. Law Journal, April 28, 1939, p. 1960.
[52] 254 App. Div. 851, *aff'd.* 280 N. Y. 656.
[53] 162 Misc. 120.

on the part of the company to inquire into the health of the annuitant or to require a physical examination; and that annuity contracts are not subject to rescission merely because the annuitant dies before receiving back in annuity payments a substantial amount of his investment.

Life Insurance Proceeds Under the Federal Estate Tax Law

A problem which is of current interest to laymen and lawyers alike is that which arises in connection with the taxation of life insurance benefits under the Federal Estate Tax Law. Lawyers will find in their examination of that problem an extraordinary example of the varying uses to which simple statutory language can be put.

The language of the present statute dealing with the extent to which life insurance proceeds are subject to estate taxes has been unchanged since its original enactment in 1918. It is as follows:

> "The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States . . .
>
> "(g) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life."

In other words, there was a reasonably clear expression of legislative intention to subject to Federal Estate Tax life insurance proceeds in excess of $40,000 arising under policies taken out by the deceased on his own life and payable to beneficiaries other than the estate, and to exclude from such tax all such proceeds arising under policies not taken out by the deceased on his own life.

It will readily be seen that the most substantial problem under the statute, once its constitutionality had been established,[54] was as to what was meant by the words "policies taken out by the decedent upon his own life". As we have no decision of the Supreme Court of the United States with respect to policies issued since 1918 on the all-important question of what is meant by "taken out by the decedent upon his own life", the question has thus far remained a matter of administrative interpretation.

Three tests might have been used:

1. Was the deceased the moving party in effecting the insurance and did he sign the application?
2. Did the deceased insured own the policies of insurance at the time of his death?
3. Did the deceased insured pay the premiums for the policies?

All three tests have at various times been used by the administrative authorities responsible for the interpretation of the Act. The first official interpretation in 1919 provided that insurance was to be deemed to have been "taken out by the decedent upon his own life" if he "pays the premiums, either directly or indirectly, whether or not he makes the application".

The 1924 Regulations were similar, except that they specifically excluded the proceeds of life insurance "where all the premiums are actually paid by the beneficiary". Those Regulations made no attempt to cover the situation where the premiums were paid neither by the in-

[54] See Chase National Bank v. U. S., 278 U. S. 327.

sured nor the beneficiary. The 1929 Regulations were similar to the 1924 Regulations, except that provision was made that where the deceased insured and the beneficiary both paid premiums, the proceeds should be taxed in the proportion that the premiums paid by the deceased insured bore to the total premiums paid.

In 1934 the Regulations were again changed to provide:

> "Insurance is considered to be taken out by the decedent in all cases, whether or not he makes the application, if he pays the premiums, either directly or indirectly, or they are paid by a person other than the beneficiary, or decedent possesses any of the legal incidents of ownership in the policy."

Thus under the language of the 1934 Regulations three tests were set forth for determining what was meant by the language "insurance taken out by the decedent"—payment of premiums by the insured, payment of premiums by one other than the beneficiary, and retention of the legal incidents of ownership by the deceased insured. Administrative practice, however, was to include as taxable only those policies payable to beneficiaries other than the estate in excess of the $40,000 exemption under which the decedent reserved one or more of the legal incidents of ownership.

In 1937 the Regulations were again changed so that the sole test of determining what is meant by "insurance taken out by the decedent" was the test of whether the deceased insured possessed any of the legal incidents of ownership. On January 10, 1941, the Regulations were again amended to read as follows:

> "Insurance receivable by beneficiaries other than the estate is considered to have been taken out by the decedent where he paid, either directly or indirectly, all the premiums or other consideration wherewith the insurance was acquired, whether or not he made the application. Such insurance is not considered to have been so taken out, even though the application was made by the decedent, if no part of the premiums or other consideration was paid either directly or indirectly by him. Where a portion of the premiums or other consideration was actually paid by another and the remaining portion by the decedent, either directly or indirectly, such insurance is considered to have been taken out by the latter in the proportion that the payments therefor made by him bear to the total amount paid for the insurance."

In other words, the emphasis is now back once more on the factor as to who pays the premiums for the insurance.

This uncertainty and vacillation in the policy of the Treasury authorities as reflected in these changing Regulations has particularly dangerous consequences in this instance because it relates to statutory language which is so simply stated that even the layman thinks he can interpret its meaning. As matters stand now it seems clear that the policyholder who wants to obtain the greatest degree of assurance as to the status of his policies for Federal Estate Tax purposes should not rely on the assurances of any layman, but should resort to expert legal advice.

Creditors' Claims Against Life Insurance Proceeds

Creditors' claims against life insurance funds have been the subject of much legislation and litigation. Legislatures generally have recognized the beneficent purposes of the insured and have limited creditors' claims that might interfere with their fulfillment. In this state under Sections 55-a, 55-b and 55-c of the old law and now under Section 166

of the new Code, there have been unusually detailed provisions for the protection of the beneficiary's interest under the life insurance contract, and its relatives, the disability and annuity contracts. Perhaps no other life insurance problem is so elaborately provided for even in the New York Code. The only creditor against whose claims our state law has not and of course could not protect the beneficiary is the representative of the Treasury Department of the Federal Government, seeking to enforce against life insurance policies liens for Federal taxes, such as income taxes. This fact creates a problem for holders of life insurance policies which is particularly important today in view of the fact that the Government is evidencing an increasing interest in seeing life insurance policy proceeds applied to the satisfaction of its tax claims.

One of the earliest cases in which such an effort was made was *Kyle* v. *McGuirk*.[55] There the Collector of Internal Revenue imposed a lien for taxes against the insured, and then issued a warrant of distraint directing that a levy be made on the property rights of the insured in a policy under which his wife was beneficiary, and the insured had the right to change the beneficiary, to borrow on the policy, and to receive the cash surrender value thereof. The warrant of distraint was served on the insurer which had issued the policy, seeking to recover the value of the policy. Thereupon the beneficiary wife filed a petition to vacate the warrant on the ground that the local exemption statute exempted the policy from the claims of all creditors, including the Federal Government. The district court held that the local statute had the effect claimed for it by the petitioner, and quashed the warrant of distraint. On appeal the decree of the district court was reversed. The appellate court held, first, that the local exemption statute did not apply to the claim of the Federal Government under the revenue laws. It then said that while the distraint would be unenforceable if under the local law the property rights in the policy belonged to the beneficiary wife, it had not been established to the court's satisfaction that under Pennsylvania law the property rights in the policy were not in the insured during his lifetime to an extent sufficient to subject those rights to distraint. Accordingly the Government's claim should be enforceable.

There has also been a series of cases involving claims by the Government under Section 3710 of the Internal Revenue Code which reads in part as follows:

> "(a) Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector * * * making such levy, surrender such property or rights to such collector, * * *
>
> "(b) Any person who fails or refuses to so surrender * * * shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered * * *".

The first of these cases is *U. S.* v. *Metropolitan Life*,[56] which was an action in the District Court for the Eastern District of Pennsylvania to recover a penalty for failure to surrender to the Collector of Internal Revenue the value of a policy of insurance issued on the taxpayer's life. The insured was not made a party to the action. The insurance company moved for dismissal on

[55] C.C.A. (3rd) 82 F. (2d) 212.

[56] 36 F. Supp. 399.

the ground that the insured was an indispensable party to the suit and had not been included as defendant. They made this contention on the ground that the insured had certain rights, such as the right to change the beneficiary and to receive the cash surrender value, which could only be exercised by him. The court denied the insurance company's motion to dismiss, and seemed to indicate by way of *dictum* that the Government was entitled to the cash surrender value and could reach the cash surrender value without requiring the surrender of the policy.

In *U. S.* v. *Penn Mutual* (not yet reported), the same court passed squarely on the question whether the cash surrender value of a life insurance policy payable to a named beneficiary was subject to distraint for payment of delinquent Federal income taxes and held that it was not. In the course of its opinion the court pointed out that the only issue which had been decided in the previous *Metropolitan Life Insurance Company* case was whether or not the insured was a necessary party, and that its views as to whether the cash value could be reached were merely *dicta*.

Then in *U. S.* v. *Massachusetts Mutual*,[57] the United States District Court for Massachusetts was called upon to apply the provisions of Section 3710 to another insurer, and in refusing to compel the insurer to pay over the cash surrender value of the policy in question ruled that the plaintiff could not establish the value of the taxpayer's property rights without joining both the insured and the beneficiary as parties defendant; that the cash surrender value of the policy was not a debt from the company to the taxpayer; that the Government's lien upon the taxpayer's interest in the policy was subject to the existing rights of the beneficiary of the policy; "that whether or not the rights of the beneficiary in the policy were irrevocable after notice by the insured to the company, nevertheless, she has had at all times a property right therein which is inseparably intertwined, while the policy is in force and the insured and beneficiary are living, with the insured's property right therein"; and finally that the defendant insurance company had no power to surrender to the Collector the taxpayer's own exclusive right in the policy separated from the rights in the beneficiary, and, furthermore, had no power to surrender to the Collector any of the beneficiary's rights.

Another proceeding under Section 3710 was involved in *U. S.* v. *Metropolitan*,[58] decided by the United States District Court for the Southern District of New York. In denying the Government's motion for summary judgment the court said:

> "when demand was made, the insured had no claim against the Metropolitan, for the cash surrender value, but rather had a series of rights under the terms of the contract of insurance and as defined by them. One of these rights gave him the power to elect to surrender the policy for its cash surrender value. No one here has that power nor any power to compel him to act. There is a distinction between this and a claim vested in the insured against the insurer, at the time of the demands."

It also called attention to the fact that:

> "The beneficiaries have a property right in these policies until the insured or one having the power so to do divests them of it in accordance with the terms and conditions of the contract. We think these rights cannot be summarily disposed of as attempted here."

[57] 38 F. Supp. 353.

[58] 41 F. Supp. 91.

In each of these three cases last discussed the Government has taken an appeal, but so far as I know the appeals have not yet been decided.[59]

Several recent cases indicate another method by which carefully planned life insurance programs may be disturbed as the result of the assertion of tax claims by state or Federal Government. I refer to the cases in which an executor or some governmental representative attempts to enforce claims for estate taxes by resorting to insurance proceeds left with insurance companies under optional modes of settlement providing for periodical payments to beneficiaries. In this connection, I call your attention particularly to *Matter of Scott*.[60] In that case the insured died leaving certain insurance proceeds with the insurance company under optional modes of settlement providing for stipulated payments to beneficiaries designated by the insured. The executor of the estate, having paid the Federal and New York Estate Taxes out of the assets of the estate, then brought suit against the insurance company and the beneficiaries to obtain reimbursement out of the insurance proceeds held by the company for the taxes which he had thus paid. He sought such reimbursement under Section 124 of the Decedent Estate Law in the proportion which the insurance funds included in the estate bore to the total taxable estate. The relief sought was granted by the Surrogate, who ordered the insurance company to reimburse the executor and in turn authorized the insurance company to adjust future installment payments to the beneficiaries by reducing the amount of insurance proceeds held by it. The general basis for the decision is reflected in the following quotation from his opinion:

> "There is deemed to be written into each contract, nevertheless, a clause which says in substance that immediately upon the death of the insured there is payable out of the policy proceeds (no matter in what form these are described in the written terms of the policy) the amount of the tax lawfully imposed thereon and that the benefits then accruing under the policy are deemed to be re-adjusted on an actuarial basis to the amount which would be payable had the policy terms in express words provided for the immediate payment of the death tax by the insurance company."

More recently an attempt has been made by the Federal Government itself to resort directly to insurance proceeds of a deceased insured in order to collect estate taxes.[61] This action was brought against the insurance company as the transferee of the proceeds left with it under optional modes of settlement. The statutory provisions relied upon by the Government were Sections 315 and 316 of the Revenue Act of 1926, as amended. The Board of Tax Appeals held that the insurance company was liable, basing its decision primarily on the holding of the New York courts in the *Scott* case. It said:

> "But if the New York Courts were correct in the Scott's Will case, in holding the Northwestern Mutual Life Insurance Company liable to the executor of Scott's estate for a proportionate part of the Federal and State estate taxes which the executor had paid because of the transfer of proceeds of policies of insurance which it had received to hold on deposit for purposes of deferred settlement with the designated beneficiaries, then we think by the same line of reasoning petitioners are liable for the tax here involved, under Section 315 (b)."

An appeal of the decision of the Board has been taken to the United States

[59] Since the foregoing was written the Circuit Court of Appeals for the First Circuit has affirmed the decision in the *Massachusetts Mutual* case. The opinion was dated March 13, 1942.

[60] 158 Misc. 481, *aff'd.* 249 App. Div. 542, *aff'd. without opinion* 274 N. Y. 76.

[61] See John Hancock v. Comm'r., 42 B.T.A. 809.

Court of Appeals for the District of Columbia upon stipulation of the parties, after the Board upon a rehearing adhered to its original decision.

The hearing has been held before the United States Court of Appeals for the District of Columbia but to date no decision has been rendered by them.[62]

From these two cases it should at once be apparent to the lawyer how important it is to make adequate provision in his client's will for the payment of estate taxes, in order to avoid similar frustrations of carefully planned life insurance programs. Thus we have one more illustration of the importance of the specific phraseology of the documents, contracts or legislation involved in legal problems.

I hope what I have said tonight also emphasizes the importance of study of the content of legislation, even apart from its judicial interpretation. Modern legislation and its enforcement influence, directly or indirectly, wide areas of human relations, and its content ought to be better known to the practicing lawyer than it has been in the past.

Perhaps it is my early experience in legislative drafting and administrative law that makes me stress these points. I well remember the attitude of those truly great common law lawyers who constituted the Columbia Law Faculty when I first attempted to introduce legislation and administrative law into the law school curriculum. They looked askance at the idea that the content of the then recent Federal Tax Laws might eventually become more important and of greater concern to the corporation lawyer than the common law decisions. I suppose everyone now knows that such legislation influences in important ways not only the organization and procedure of corporations, but also the drafting of contracts between individuals, and trust agreements and wills.

What we now call the law of insurance, and especially life insurance law, is so much a combination of statute, administrative regulation and decision, as illustrated by the material which I have just presented to you, that all its sources —legislative, judicial and administrative, must be studied if it is to be reasonably understood and applied. Moreover, it cannot be fenced off. It influences and is influenced by other fields of law. It is this idea of the law of insurance which I have had in mind in preparing this summary of present trends.

[62] Since the foregoing was written the Board of Tax Appeals has promulgated an opinion dated March 11, 1942, in the case of *Equitable* v. *Commissioner of Internal Revenue*, holding that the insurer was not liable as transferee where the insurance proceeds were left with the insurer at the instance of the beneficiary rather than by direction of the insured.

Publications of Interest to Law Librarians

TORTS RESTATEMENT, TENTATIVE DRAFT NO. 18, is now out of print. Positive photostats at $4.00 each, payable in advance, may be obtained from the Biddle Law Library of the University of Pennsylvania, 3400 Chestnut St., Phila., Pa.

AN OUTLINE OF ARBITRATION PROCEDURE (revised to January 1, 1942) prepared by the Committee on Arbitration of the Association of the Bar of the City of New York, can be secured at 10¢ each from the Association of the Bar.

NOTES OF A LAW BOOK SCOUT IN SOUTH AMERICA*

By Miles O. Price
Law Librarian, Columbia University

Judging from my own experience, gained in two trips down there, the law book scout in South America needs in ample measure good legs, good luck and a cast iron digestion. And of course he must know what he wants and its reasonable value, and have some knowledge of Spanish or Portuguese so as to transact business.

Good legs are a prime requisite, because though dealers in new books there as well as here frequently handle second hand material also, it is the Fourth Avenue type of old book store which has most of what the book hunter wants at the price he wishes to pay, and it usually takes a lot of finding. Taxicabs are not much good for searching out these stores, most of which are small and obscure and may lurk in the most unexpected places, so the book hunter must walk for miles and miles to locate his sources of supply.

Either I have developed a successful formula for finding the second hand book stores in a strange town, or have been uncommonly lucky, because it has never, except in Buenos Aires, taken more than an hour or two to spy out the land. They are almost always to be found in a deteriorating business district on the edge of a prosperous one; also one or two usually are to be found near the school of law or the law courts. Unfortunately, except in Rio, within such districts they are scattered instead of contiguous, which is where the legs come in.

However, one of the joys of book hunting is to find a choice shop, in spite of the pontifical new book dealers, who will always maintain there are no second hand stores carrying what you want. Perhaps the scandalous price differentials between the two may have something to do with that. Within a few hundred feet will be found many such divergent quotations as $10 and $100, $150 and $480, 10 cents and $8 in Argentina, Brazil, Chile, Peru and Uruguay. Probably the same holds true for countries not visited. Armed with quotations from New York and local South American dealers, I saved two and one-half times the expenses of a three-months trip in one city alone over these quotations, in addition to acquiring material unavailable by correspondence.

These things, however, do not fall into the book scout's lap. Only one of the numerous sets I wanted was found complete in one shop. The rest were pieced together from as many as half a dozen shops—from trash piles, water closets, under tables. In one city most of a set quoted by a dealer at $525 was found

* These notes were written at the suggestion of the Editor for the readers of the Law Library Journal who have asked to hear about Miles Price's most recent trip to South America.

The story of his return voyage, through the war zone on a ship laden with munitions, is told in his personal diary which the Editor has been privileged to read. At the risk of violating a confidence, we are quoting one excerpt from the diary because it is so characteristic of Miles Price, and because it certainly exemplifies in the highest degree the true spirit of librarianship. This entry in the diary was made after a number of the passengers had disembarked to return by plane: ". . . I stayed put in the face of a virtual order to go ashore and take my 17 cases of books with me . . ." ". . . the ship will be more of a target than ever for a submarine, and I wish I were home. I'd have left, except for my books. I don't want to lose them after all the troubles I've had with them." So the Captain with his crew, Miles Price with his law books, and a few other passengers "stuck to the ship". She reached New York safely to the great relief of Mr. Price's many friends. Editor's note.

in the basement of another dealer who did not want to sell because it was incomplete. Because, following my usual custom of not buying until I had been in town a week, and looking in the meantime at all available stocks and prices, I was able to give him a list of the missing volumes, to be found in several other stores, the complete set was acquired at well less than half the original quotation. Similar procedure saved $330 on another set of about two hundred volumes. As often as not, the benefit is two-fold, in that a complete set is put together in this way which could not otherwise have been obtained. Book dealers hate to spend their time completing sets from outside their own stores, apparently.

For some reason or other they frequently have to be prodded before admitting having what is wanted. The one important set found complete in one store illustrates this point as well as the factor of luck. This set, of about 140 volumes, was one I was most anxious to acquire, but in every bookstore I had drawn a blank. The best library dealer in Rio showed me a partial set I remembered having seen nine months before, which he had been vainly trying for two years to complete for a North American customer. He did offer several runs, amounting in all to about half the set, however. One afternoon in São Paulo, two hours before train time back to the boat at Santos, I wandered into a store which I remembered from a previous trip, in a last desperate effort to find some more volumes before leaving the country. They had only three and laughed at me for trying to complete the set. However, I noticed a stairway to a dark basement and asked if there was anything down there to look at. Yes, some stuff had just come in but was not yet arranged or cataloged.

What they had was the most beautiful collection of Brazilian law books in content and binding I had ever seen, just bought from a retired Supreme Court judge, and in it was my set, complete. As so often happens, they took a quick turnover rather than catalog and list it, for less than a third of the price based on odd-volume quotations. My only regret was that Columbia already had all the rest of the sets, and that I lacked time to check on the separates; and that I had not seen something of the sort when starting years ago to build up our Brazilian collection. But maybe nothing of the sort would have been available then.

There is the hazard—to arrive in a town where a newly acquired library is being dispersed, because that is the important source of supply for the really good material. If a United States librarian, just beginning to build up a collection of Brazilian law, could have happened into that bookstore then just as I did, he could have acquired, ready made, an excellent collection, beautifully bound, at a small fraction of the cost in money and labor, of doing it by correspondence over a period of years. But when that library is arranged and cataloged, not only does the price go up steeply, but the best stuff speedily goes out of the shop to local lawyers.

I was fortunate in being able to spend an afternoon in one of the magnificent private libraries frequently found in South America, and which form the source of supply for the book dealer and book scout when dispersed. This was the library of Don Luis Amunategui Reyes, Director of the Academia Chilena,

member of one of the great old Chilean families, and a noted lawyer. His library, housed in several rooms of a vast old "palace", formerly the residence of Chilean Presidents, comprises 30,000 volumes of history, literature and law, beautifully bound and much of it unique. Except for recent texts, the collection is practically complete for Chilean legal material, and some day probably will go on the market, to afford some lucky buyer the opportunity to pick up a ready made law library.

With a few notable exceptions the book trade in the countries visited seems not to be organized to render service to libraries equivalent to that of Sweet & Maxwell in England or Nijhoff in Holland, for example. Few dealers will supply odd volumes to complete sets, missing numbers to complete volumes, or handle periodical subscriptions. Some fine ones do not even answer letters. The September, 1941, Pan American Book Shelf lists many Latin American book dealers, but omits some good ones.

The foremost Brazilian dealer in new law books is the Livraria Editora Freitas Bastos, with stores both in Rio and Sao Paulo. The best library agent is undoubtedly the Livraria J. Leite, Rua Sao Jose, 80. Senhor Leite will search throughout Brazil for wanted material, which he collates before shipping. His prices are not low, but reasonable. His shop is in the middle of a closely grouped congeries of second hand stores, including some good ones, which unfortunately do not like correspondence, such as the Livrarias Quaresma and Jacyntho. The best second hand dealer in Sao Paulo is the Livraria Brasil, also in the middle of a group of second hand stores.

In Montevideo the large new book dealer, who also handles some old material, is the Casa A. Barrairo y Ramos, S.A. Claudio Garcia, who conducts the Bolsa de los Libros, has by far the best stock of periodical sets. There are three stores out near the law school which are fair.

Buenos Aires has no second hand district, and stores must be laboriously sought out. There are some on the upper end of the Calle Corrientes, not far from the law courts, off Lavalle. By far the best, but with no low prices, are the Librerias Nacional de J. Lajouane y Cia., Calle Bolivar 270; and Perrot, near the law school. Others are Librerias Cervantes, Fernandez Blano, and several on the Calle Lavalle. The best new book stores are "El Ateneo," and "La Facultad," and "General Lavalle," all of which sell some second hand stuff too. Lajouane and Perrot are good library agents, but probably the best is the Libraria Panamericana, Casilla de Correo 98. This outfit is operated by two brothers who understand library wants and have correspondents all over Argentina and Chile. Prices in Argentina and Uruguay are much higher than in other countries visited.

In Santiago, Chile, the most prosperous dealer is the Casa Zamerano y Caperan, dealers in both new and second hand law books. Libreria Nascimiento publishes and sells new books. Libreria Ivens is a library agent, run by a Hollander who speaks and writes English. Ivens will handle current subscriptions. There are half a dozen second hand shops, one quite large, on Santiago street near the University, but they are not for business by correspondence. By far the best and most reasonable for second hand material is the Libreria Joyosa Chilena,

run by a grand old gentleman, Don Luis Donosa Z.' He scorns telephones and typewriters and his place is not pretentious, but all North American scholars in Santiago swear by him, and with reason.

Valparaiso has several new and second hand stores, none of which is important. There you can even purchase law books in a sort of out-of-doors "Flea market," a fascinating procedure but not very profitable.

In Lima, Peru, the second hand shops are over behind the Cathedral (with Pizarro's bones) but they are not very large or important. The best law book store (also a publisher) is the Libreria y Imprenta Gil, S.A.

Library discounts, as we know them, are not customarily given in South America, but they may be had. Likely as not the protesting dealer will ask if the discount is to appear on the receipted bill. By the same token, hotels, educated by commercial travelers, may offer you a receipted bill for a much larger amount than actually paid, for the expense account. Not the least important saving effected by doing business on the spot is that of the difference between the cost of the local currency at the official exchange rate and that on the "Black Bourse". In Chile this amounts to 40%, but in that country there is an export and exchange control law with as many teeth as a shark, which got me into such serious trouble that my books were held and I only got out of the mess by the aid, as so often happens to men in this world, of a woman.

There are many fine libraries in South America, though the service and organization expected in the United States are not yet common. However, the leaven of United States library school trained assistants is making itself decidedly felt. The collections comprise more Roman, French, Italian and Spanish law than the purely national, since the systems are of course based upon the Roman and civil law. So a library of 100,000 volumes, as the very fine one of the University of Buenos Aires, probably will not contain more than 10% of national law. This library, by the way, has the only considerable collection of United States (not English) law seen down there. The National University Law School, in Rio, is only a few years old, and its library, while growing, is not yet very important except as a working library. It is housed in the ancient former residence of the Conde de Lage. The finest law library in Rio is in the Itamuraty Palace, of the Ministry of Foreign Relations. It is a well housed and equipped collection of 100,000 volumes, under the direction of Dr. Oliveira, who is a most cooperative person in digging up government publications.

The Law School Library of the National University in Montevideo is a fine collection of 50,000 volumes, very little of it Uruguayan, with excellent files of current Latin American law reviews and several North American. The University of Chile Law Library is housed in an excellent modern building, and is a rapidly growing one of about 20,000 volumes. An interesting part of this is the collection of bound, printed dissertations from all law schools in Chile, in which country the degrees are granted only through the Law School in Santiago. The finest Chilean law library is that of the national Legislature, on Libertad Street.

Only in Brazil and Argentina do national text books form a numerically important part of the law library. Commentaries on the codes are the important works, and, increasingly, sets of judicial decisions.

In Rio I was privileged to attend the trial by ordeal by which new faculty members are selected. Each candidate prepares a thesis (not to be confused with the law school graduation thesis) and on a given day he expounds and defends it before a committee of five of the faculty, in public—both the candidate and the committee attired in full academic robes in spite of the heat. The attack and defense are spirited, and may take as long as eight hours, with the candidate seated facing the faculty committee (which is on a raised dais), with a full panoply of books and other documents at hand to help him. I wondered how our own faculties would like this method of selection, putting on a Roman holiday for the students.

Law students and law school appearances generally, are strikingly similar to ours, except that the percentage of women seems higher. However, there is practically no case system of instruction, lectures, together with "canned" notes furnished by the instructors, serving as guides to intensive studies of codes and commentaries over a course which may extend for seven years. I happened to be in Santiago at examination time for the entire university, and one of the highlights of the trip was to see hundreds of students congregated in a magnificent parkway about three miles long, by a rushing river from the melting snows of the gorgeous snow covered Cordillera of the Andes in full view forty miles away, rather frantically studying their outlines and syllabi, usually while waking back and forth. Looking at a group of students belaboring each other, you could imagine them saying the equivalent of "* * * but Professor Powell says that the rule as laid down in Smith *vs.* Zilich is * * *"

Fortunately for illusion, they speak too rapidly for my frail Spanish to encompass. Some knowledge of the language is certainly necessary for the book hunter, as their second language is French, not English. Usually help is at hand, as the English instructor who constituted himself my cicerone on Montevideo. Noticing that his fluent English employed just a shade the wrong accent and vocabulary, I asked him where he learned the language. His proud answer was "from American movies." I am afraid I left him in some perturbation as to the complete efficacy of gangster and Wild West pictures as a guide to correct English.

However, he did so much better in Spanish than I, who never could quite fathom the mysteries of a language in which "once" means eleven, pancakes and ice cream are respectively "panqueques" and "hayskrim," and a lecheria has nothing to do with lechery or a ferreteria with ferrets.

THE COUNCIL OF STATE GOVERNMENTS, 1313 East 60th St., Chicago, Ill., announces that a limited number of complete sets and single issues of its publication *State Government* beginning with volume 4, 1931 through volume 14, 1941, are available for the cost of wrapping and shipping. Complete sets 50¢ each, single copies 5¢ each; enclose postage, coin or check with your order.

WHO'S WHO IN LAW LIBRARIES*

Gamble Jordan of Pike County

February 28, 1942

Dear Helen:†

Yesterday I spent the afternoon with Gamble Jordan. And a more enjoyable time I can't remember. He is simply amazing. Just imagine—fifty-seven years a law librarian. And full of pepper; on the go all the time. He talks with the speed of a machine gun, and thinks the same way. At everyone's service every moment of the day; he gives personal attention to all who come into the library, and that is no small crowd. But let me tell you as much as I can remember of the visit from the beginning.

After I received your letter suggesting an interview and sketch of Uncle Gam (after the St. Paul meeting I always think of him as "Uncle Gam"), I wrote him a letter and told him of my assignment. Yesterday I was downtown and found the afternoon free, so I headed for the Civil Courts Building on 12th and Market. It was a sunny day, but the melting snow and sharp breeze kept the temperature down and the rush of warm air which met me at the revolving door was more than welcome. In a few moments the elevator took me to the 13th floor, and I stepped out into the lobby of the Law Library Association of St. Louis.

The library has occupied this location since August 20, 1930 and the arrangement of stacks, reading room, conference rooms and office space indicates the work of an experienced hand. In the lobby, and projecting out from the reading room, is a U shaped administration desk where the assistant librarian holds forth. From this vantage point staff members can assist patrons in the reading room and they can also cast a scrutinizing eye in the direction of those who come and go in the lobby. (This doesn't mean that the law library is not the best alibi offered by St. Louis lawyers to their wives as it was intended when the library was founded, but it does mean that the limitation of library use to members and public officials is carefully observed.) On the left-hand side, reached through three entrances leading from the lobby, is a spacious area occupied by individual

Gamble Jordan and Oscar Orman at the St. Paul Meeting in 1938

* This is the first of a series of biographical sketches of prominent members of the American Association of Law Libraries. Mr. Jordan has been an active member of the Association since 1910. Editor's note.

† Helen Newman, the Editor of the LAW LIBRARY JOURNAL.

study tables. In this room, bound in attractive variegated colors is shelved an excellent collection of Anglo-American legal periodicals. I walked into this room and then turned right—in the direction of the librarian's office. There I greeted Gamble Jordan.

As you know, Uncle Gam is not a large man, and while his ever-present fedora adds five or six inches to his height, his constant activity does not permit any horizontal expansion. (That is an exclusive feature of his book collection.) He always makes his visitors feel welcome. I don't mean that he takes off his hat, but he just radiates good will and generosity. After exchanging the usual amenities of the occasion, which, by the way, involved some elements of persuasion on my end of the line, we sat down at one of the study tables I mentioned above. Uncle Gam boosted his felt to a rakish angle and began to talk. I began to scribble in what I thought was the best H. Allen Smith style.

Over three hundred years ago Samuel Jordan was shipwrecked on the Barbados Islands. With no little struggle he made his way to Jamestown where he joined the Virginia settlers in 1610. He purchased land, established a family and later became a delegate to the House of Burgesses. An interesting story concerns his second wife. It seems that the day after his death the clergyman who performed the benediction at his funeral proposed marriage to his widow. Naturally she refused, but she gave the minister reason to believe that she would be in a different mood a year later. He returned after twelve months to find her married to someone else. Perturbed and grieved he was. So he instituted proceedings for breach of promise. Twice the case traveled the treacherous Atlantic for disposition in London. And twice he failed. From this, one notes that Uncle Gam's forebears had interest in the law. From this, one may also observe that the Jordans have long exercised outstanding judgment in the selection of beautiful and popular wives.

Around the year 1710 the descendants of Samuel Jordan moved to South Carolina. Here they resided until 1808 when John Jordan, accompanied by a favorite slave, rode west to St. Louis. He followed the Mississippi northwards to the region now known as Pike County. After purchasing 640 acres in the Buffalo Creek Valley, he returned to South Carolina. Two years later John Jordan and his brother, Capt. Robert Jordan, led a caravan made up of their families and friends from York District, S. C., to their new home. Upon arrival forts were built and Indians were driven away. But not without cost, for Capt. Robert lost his life in a skirmish with the redskins.

In 1818 John Jordan, great-grandfather of our Gamble Jordan, was one of the organizers of Pike County, so named for the discoverer of Pike's Peak. The following interesting observation was recently published in the Missouri Guide Book:

> "The slang term "Pike" or "Piker" derives from this place. As the *Knickerbocker Magazine* in 1857 explains: 'Our only neighbor was a squatter, and a Pike of the pikiest description. There may possibly be some untutored minds, who do not understand the meaning of the term "Pike". It is a household word in San Francisco, originally applied to Missourians from Pike County, but afterwards used to designate individuals presenting a happy compound of verdancy and ruffianism.'"

This description, of course, refers only to those who left Pike County. Many of the sons of the Buffalo Creek district remained to become famous. Included in this group are Col. James O. Broadhead, first president of the American Bar Association, "Champ" Clark and his son, the present Senator, and the recent Governor of Missouri, Lloyd C. Stark.

In the spring of 1838 The Law Library Association of St. Louis was established. Heading the list of members was the signature of H. R. Gamble. On February 1, 1839 by an Act of the Missouri Legislature, the Association was declared and created a body corporate, having perpetual succession. By an Act approved February 27, 1855, the library was made exempt from taxation. In 1940 when Gamble Jordan was writing in a special issue of the St. Louis Daily Record, he stated: "It is conceded that the idea of establishing a law library for the lawyers practising in the City of St. Louis and its early suburbs had its inception in the mind of Charles D. Drake. For a total of 14 years between 1838 and 1866, Mr. Drake served, at various times, as a director of the Association. For nine years he served as President."

Arba N. Crane, the man Uncle Gam continually refers to in words of reverence and affection, became a Director of the Association in 1868 and its President in 1881. Twenty years ago Gamble Jordan wrote of Crane: "The wisdom, discrimination and purchasing sagacity displayed by Mr. Crane in making his acquisitions for the library was on more than one occasion remarked to the writer by such eminent dealers as Messrs. Soule, Carswell, and T. L. Cole. . . . In 1881 and again in 1895 he prepared and published a catalogue of the books of the St. Louis Library, both of which were, at the time of their issue, the most complete in the way of a printed and bound law catalogue, and it is quite well authenticated that from the inclusion by Mr. Crane in his first catalogue of references to articles in periodicals, was gathered the suggestion by Mr. Soule and Mr. Jones for the publication of Jones' Index which is now so acceptably supplemented by our Association's Index."[1]

In 1881 Isaac H. Orr, now president of the Saint Louis Union Trust Company, came from Pike County to be the Association's librarian. He was succeeded by A. O. Rule in 1882, also from Pike County, and when the latter resigned in 1885, his successor became his brother, Virgil Rule, who was instrumental in causing Gamble Jordan to leave his home in Louisiana, Pike County, to become his assistant in St. Louis at a salary of twenty-five dollars per month. At that time the library contained 13,000 volumes. Three years later (1888) Uncle Gam was appointed librarian and his monthly salary was increased to fifty dollars. Since that date the Law Library Association of St. Louis has had no other administrator.

For fifty-seven years Gamble Jordan's principal interest has been this library and its users. Today it contains over 67,000 volumes, and very few duplicates are numbered among them. The common denominator of all of Uncle Gam's activities is the desire to serve. This library is built and operated solely and exclusively for the lawyers and judges of St. Louis. And many of the 980 members are among the third generation

[1] 16 L. Lib. J. 7-8 (April, 1923).

to be served by the always-at-your-service Mr. Jordan. When he describes his education, he states that after public school training he spent two years in a Baptist College and for the past 57 years he has been enrolled in a post-graduate course in Legal Bibliography. His modesty causes him to refer constantly to Crane and Soule and other early Directors and friends of the library as well as the present President of the Association, Mr. H. Chouteau Dyer and members of the Board of Directors. His loyalty to Pike County leads him to dwell on the activities of its famous sons. Anyone familiar with law libraries can tell in a few moments that here is an outstanding law librarian and a grand man.

Cordially yours,

OSCAR C. ORMAN
Director of Libraries
Washington University
St. Louis, Missouri

COUNCIL OF NATIONAL LIBRARY ASSOCIATIONS*

The formal organization meeting of the newly formed Council of National Library Associations was held in New York City on March 5, 1942. Fifteen associations were represented.

The chief business was the adoption of a constitution and the election of officers. The constitution as adopted is given in full below.

The officers elected are: Sidney B. Hill, Chairman; Laura A. Woodward, Vice-Chairman; and Milton E. Lord, Secretary-Treasurer.

Mr. Hill, the Assistant Librarian of the Association of the Bar of the City of New York, is the President of the American Association of Law Libraries. Miss Woodward, the Librarian of the Central Research Library of the Maryland Casualty Company in Baltimore, is the President of the Special Libraries Association. Mr. Lord, the Director of the Boston Public Library, is the representative of the American Library Association upon the Council.

The officers were authorized to enter upon the duties of their offices immediately. They were charged to make arrangements for a meeting of the Council in connection with the annual conference of the American Library Association in Milwaukee in June 1942, to develop a program for that meeting in accordance with suggestions from the several member associations, and to formulate recommendations for the consideration of the Council as may appear necessary and desirable.

MILTON E. LORD,
Secretary-Treasurer

* Formed at a meeting of representatives of national library associations held Dec. 28-29, 1941, Drake Hotel, Chicago, Illinois. See 35 L. LIB. J. 25 (January, 1942). Editor's note.

Constitution of the Council of National Library Associations

As adopted at the meeting held in New York City on March 5, 1942 for the purpose of effecting formal organization of the Council.

Article I—Name

Section 1. The name of this body shall be the Council of National Library Associations.

Article II—Object

Section 1. The object of the Council of National Library Associations shall be:

(a) to consider the relationships between the several national library associations of the United States and Canada;

(b) to facilitate the interchange of information among them;

(c) to work out plans for cooperation in activities.

Section 2. The Council shall direct its efforts primarily to opening and then widening the channels of communication between the several national library associations, with a view to fostering cooperation between the member associations in their various activities. The Council shall not in its own right be an operating body except for the above purposes. To its member associations it shall reserve all rights of action, whether individually or jointly between any two or more associations, in any field of activity.

Section 3. The Council shall be a non-profit body of the scientific, literary, educational, charitable category.

Article III—Membership

Section 1. The charter members of the Council of National Library Associations shall be the following national library associations in accordance with their votes to participate in the Council:

American Association of Law Libraries
American Library Association
A.L.A. Division of Cataloging and Classification
A.L.A. Division of Libraries for Children and Young People
A.L.A. Library Extension Division
American Merchant Marine Library Association
Association of American Library Schools
Association of College and Reference Libraries
Association of Research Libraries
Catholic Library Association
Inter-American Bibliographical and Library Association
Medical Library Association
Music Library Association
National Association of State Libraries
Special Libraries Association
Theatre Library Association

Section 2. Any other national library association of the United States and Canada may be admitted into membership by a majority vote of the several member associations acting through their duly authorized representatives in formal meeting.

Article IV—Representation

Section 1. Each national library association which holds membership in the

Council shall be represented by two individuals from its own membership, one to be the president or his appointed representative unless otherwise voted by his association, and the other to be its most recent past president or its most recent past representative to the Council.

Section 2. Each member association shall have a single vote in the business of the Council. A determining vote shall be a majority vote of the several member associations acting through their duly authorized representatives.

Article V—Meetings

Section 1. There shall be two stated meetings of the Council in each year, in the months of April and October unless otherwise directed by the Executive Committee. Additional meetings shall be called at the discretion of the Executive Committee when and as necessary.

Section 2. A majority of the duly authorized representatives of the several member associations shall constitute a quorum.

Article VI—Officers

Section 1. The officers of the Council shall be a Chairman, a Vice-Chairman, and a Secretary-Treasurer, to be elected in formal meeting from among the individuals serving on the Council as duly authorized representatives of the several member associations. They shall hold office for one year or until their successors are chosen.

Section 2. The officers shall be elected by written ballot upon the majority vote of the several member associations acting through their duly authorized representatives in formal meeting. They shall be chosen at the spring meeting in each year and shall begin their term of office on the first day of the following July.

Section 3. The officers shall constitute an Executive Committee for the general direction of the business of the Council between meetings. They shall individually perform the duties usually pertaining to their offices.

Article VII—Committees

Section 1. The Executive Committee shall be charged with the responsibility of recommending action and machinery appropriate to the objectives of the Council, including the provision of means for financing the activities of the Council.

Section 2. The Executive Committee shall appoint such other committees as it may find necessary for accomplishing the purposes of the Council. It may appoint to membership upon such committees individuals other than those serving as authorized representatives of the several member associations.

Article VIII—By-Laws

Section 1. By-laws may be adopted and amended by a majority vote of the member associations acting through their duly authorized representatives in formal meeting.

Article IX—Amendments

Section 1. This Constitution may be amended by a majority vote of the member associations acting through their duly authorized representatives, voting at two consecutive meetings not less than two months apart.

CURRENT COMMENTS

St. Louis County Law Library Dedicated

THE ST. LOUIS COUNTY LAW LIBRARY at Clayton, Missouri, was dedicated February 19, 1942 with approximately fifty lawyers and judges in attendance at the exercises. The dedication program included remarks by leaders of the Bench and Bar, a congratulatory letter from President Sidney B. Hill on behalf of the American Association of Law Libraries and an address by Oscar C. Orman, Director of Libraries of Washington University, St. Louis.

Mr. Orman said in part: "About a year ago it was rumored that Don Stevens, President of the St. Louis County Bar Association, had come to the conclusion that the judges, lawyers and citizens of St. Louis County should have a law library. On June 12th that rumor was precipitated by a statute of Missouri, approved and effective (Laws 1941, p. 339). Today the members of the St. Louis County Bar Association and special guests assemble in the library to honor its establishment and to dedicate its organization and book collection to public use and service." * * * "I do not believe that the history of any law library in this country can demonstrate the dispatch with which this library materialized. Nor do I know of another law library where better judgment in book selection has been exercised. I have examined the collection carefully and it more than meets every standard the law library profession has set for itself. The basic and fundamental statutes, reports and search books are here."

William Papp is the librarian of this new county law library which contains 4,981 volumes and is sponsored by a $1.00 filing fee in the St. Louis County Circuit Court. It is the third county law library to be established in the state of Missouri. The other two are in Jasper and Buchanan Counties. All three libraries have been set up since 1935.

Colonel Beckwith Addresses New York Law Librarians

COLONEL EDMUND R. BECKWITH, Chairman of the American Bar Association's Committee on National Defense, spoke at the February 2nd dinner meeting of the Law Library Association of Greater New York. The Committee of which Colonel Beckwith is Chairman has been functioning since September, 1940, and maintains a special Headquarters Office in the Hill Building, Washington, D. C. Colonel Beckwith is a New York lawyer, partner of the firm of Beckwith & Van Slyck.

He pointed out that extraordinary and voluminous legislation is passed in war time. There is the ever present danger that the rights and liberties of the individual may be trampled upon during such an emergency unless the attorney is equipped to meet that danger. In the many large rural areas of our country, the attorney has little opportunity to work with the organized bar, and still less opportunity to consult extensive library facilities. New laws and the rules and regulations issued thereunder are often inadequately printed and distributed. In the case of the Selective Training and Service Act of 1940, the Committee on National Defense of

the American Bar Association compiled and distributed a Manual of Law for use by Advisory Boards for Registrants. Need is great for similar manuals in other fields—such as those of Alien Enemies and Priorities. By thus cutting down the time which a lawyer must spend on a problem, the rights of individuals would be safeguarded to an extent not now possible because of the expense involved. The research techniques developed by law librarians, and their ready access to legal materials should enable them to perform real service in the war effort through the compilation of these manuals. The National Defense Committee would edit and distribute the compilations.

Interest was expressed by Colonel Beckwith in the suggestion of Mr. Lindquist that the Association aid in the salvaging and storing of duplicate materials in order to rebuild libraries which may have been or which may be destroyed by the war. He felt that this project might be carried on as supplementary to the work of compiling the subject manuals.

In the February issue of *The Legist,* publication of the Law Library Association of Greater New York, the Special Committee on Aid to Britain, Mrs. Helen May Smith Helmle, Chairman, announced that the gift of British war rules and regulations made by the British Library of Information, is now housed, serviced and ready for use at the New York University Library at Washington Square. Anyone who wishes to use this collection should get in touch with Mr. Alfred B. Lindsay, Spring 7-2000.

"A Reference List of Important War Legislation and Regulations Thereunder" compiled by Raymond C. Lindquist, was published as a supplement to the February, 1942 number of *The Legist.* This very excellent list is Supplement 2 of *The Legist.* Supplement 1 contains "A Selected List of Materials Related to War of Particular Interest to Law Librarians" compiled by Mrs. Lotus M. Mills as a supplement to the list which appeared in volume 1, no. 3 of *The Legist* and was reprinted in the July, 1941 number of the LAW LIBRARY JOURNAL (vol. 34, no. 4).

Albert Haakinson Addresses D. C. Law Librarians

ALBERT HAAKINSON, an officer of the Washington Law Book Company, spoke at the January 20th dinner meeting of the Law Librarians' Society of Washington, D. C. His topic was, "The United States Code Annotated," with particular reference to its special features including the U. S. Code Congressional Service.

Following Mr. Haakinson's remarks, officers of the Society were elected for 1942. Joseph G. Gauges, Law Librarian of the U. S. Court of Customs and Patent Appeals, was re-elected President; Helen Newman was elected Vice-President. Miss Winifred Ing, Law Librarian of the Home Owners' Loan Corporation, was re-elected Secretary and Miss Lela Stewart, Librarian of the Bureau of Internal Revenue, was named as Treasurer. Mary Virginia Lee, Librarian of the U. S. Civil Service Commission, was elected to the Board of Directors. Other members of the Board of Directors are Miss Wanda Miller, Librarian, General Counsel's Office of the Treasury Department, and Mrs. Rebecca Notz, Law Librarian of the Washington College of Law.

PROPOSED INTERPRETATIONS OF THE REQUIREMENT RELATING TO THE CONTENTS OF LAW SCHOOL LIBRARY COLLECTIONS*

TEXT OF REQUIREMENT

"Commencing September 1, 1932, for additions to the library in the way of continuations and otherwise, there shall be spent over any period of five years at least ten thousand dollars, of which at least fifteen hundred dollars shall be expended each year. Commencing September 1, 1939, such library shall include substantially the following:

"1. The published reports of appellate decisions of the state in which the school is located, together with commonly used editions of the statutes and digests."

Interpretation

a. The appellate decisions mentioned above must be in the official edition, if one is published, and must be available in addition to such decisions as they appear in the National Reporter System.

b. The statutory compilations mentioned above must be kept to date through the acquisition of the supplementary services provided in connection with such compilations or, if such supplements are not available, through the acquisition of all subsequent session laws.

c. The digests mentioned above must include a current service if one is available.

TEXT OF REQUIREMENT

"2. The published reports prior to the Reporter System of decisions of the courts of last resort in at least one-half the states of the United States with reasonably up-to-date editions of statutes in one-fourth the states."

Interpretation

a. The published reports prior to the Reporter System shall be complete for at least 20 states.

b. The statutory compilations mentioned above must be kept to date either through the acquisition of the supplementary services provided in connection with such compilations or through the acquisition of all subsequent session laws.

TEXT OF REQUIREMENT

"3. The published reports of the decisions of the United States Supreme Court with the generally used editions of federal statutes and digests."

Interpretation

a. Any edition of the decisions of the United States Supreme Court Reports may be used to satisfy this requirement provided it makes all of the decisions of this Court available to the school.

* These interpretations, submitted by the Joint Committee on Cooperation Between the A.A.L.S. and the A.A.L.L., were approved by the Executive Committee of the Law School Association in March 1941.

The Joint Committee has also submitted interpretations relating to the words "principal activities" and "qualified librarian" in the requirement relating to the librarian, but these have not yet been approved by the Executive Committee. At the present time the Joint Committee is preparing interpretations relating to all matters not already covered by interpretations, and it is hoped that the complete series of interpretations will be approved by the Executive Committee of the Law School Association before the end of the present year, at which time the text will be made available in full. Editor's note.

b. The library must possess at least one annotated statutory compilation with the supplementary service to date.

TEXT OF REQUIREMENT

"4. The National Reporter System complete."

Interpretation

a. Every unit of the National Reporter System must be complete, including the New York Supplement, provided that if the decisions of the United States Supreme Court included in the Supreme Court Reporter, are available in one of the other regular sets of these opinions, the Supreme Court Reporter may be omitted.

TEXT OF REQUIREMENT

"5. Leading up-to-date publications in the way of general digests, encyclopedias, and treatises of accepted worth."

Interpretation

a. While the word "general" is intended to indicate "general legal" digests, encyclopedias and treatises, it is advisable for the library also to possess at least one general non-legal encyclopedia and one general non-legal unabridged dictionary.

b. At least one standard English legal digest, or legal encyclopedia, shall be included in order to make the decisions in the English reports, required by section 7, available otherwise than by specific citation.

TEXT OF REQUIREMENT

"6. At least ten legal periodicals of recognized worth, complete with current numbers."

Interpretation

a. No periodical that is not complete, however valuable, shall be counted as one of the ten specified in the above requirement, but a limited number of periodicals of recognized value which are no longer available in complete sets may also be required to the extent that such sets are available in continuous runs at reasonable prices.

TEXT OF REQUIREMENT

"7. The English reports covered by the so-called reprint, together with the Law Reports to date."

Interpretation

See interpretation "b" under section 5.

STATEMENT OF GENERAL POLICY REGARDING RELAXATION OF LAW SCHOOL LIBRARY REQUIREMENTS DURING THE NATIONAL EMERGENCY*

Because it seems altogether likely that the Executive Committee of the Association of American Law Schools will receive applications from a number of schools requesting some relaxation in the library requirements (under the terms of Emergency Resolution No. 3) and as the Joint Committee on Cooperation Be-

* This statement has been submitted to the Executive Committee of the Association of American Law Schools by the Joint Committee on Cooperation Between the Association of American Law Schools and the American Association of Law Libraries.

For the text of Emergency Resolution Number 3, adopted by the Law School Association Dec. 30, 1941, see 35 L. LIB. J. 10 (January, 1942). Editor's note.

tween the Association of American Law Schools and the American Association of Law Libraries has been acting in an advisory capacity with respect to library matters, it is taking the liberty of submitting the following statement of a general policy for such consideration as the Executive Committee may desire to give to it:

1. As the library service is an integral part of an effective law school program, it should be curtailed only because the need for economy is so urgent that the particular school's program as a whole must be restricted and not because the library is regarded as an obvious and relatively less undesirable place to make economies.

2. Relaxations in the requirement relating to expenditures for books should be kept to the minimum because a very substantial proportion of the modest fund required by the Articles of Association is needed for the purchase of basic materials. In addition, it is important to keep in mind the fact that many books are published in more limited editions during periods of emergency and these may be difficult if not impossible to procure if they are not acquired currently and as published. Accordingly, it is extremely important that such publications, including sets of periodicals and all other important serials, be kept to date. If a school is permitted to reduce its expenditures for books, it may be well to call attention to the above facts in order to make certain that they are not overlooked.

3. Relaxations in the requirement that each school shall spend "over any period of five years at least ten thousand dollars, of which at least fifteen hundred dollars shall be expended each year" should be granted only for the fiscal year for which they are specifically requested, upon a showing that the school is unable to comply, and with the understanding that such a grant does not involve any relaxation in the requirement that "ten thousand dollars" shall be spent during the five year period involved. Such further relaxations should be granted only if the period of emergency continues indefinitely and upon a showing that the school is still unable to comply.

4. In providing for the librarian, the Articles of Association state that the librarian shall be "in addition to the four instructors specified in Section 7 of this Article . . ." Any relaxation of the requirement as to the librarian should, therefore, be made only because some relaxation in the combined requirement of five persons is imperative. If, in the particular school, it definitely appears that the services of a full time librarian can temporarily be dispensed with, with less harm to the school than would be occasioned by dropping an instructor, the responsibility for maintaining the library service should be definitely assigned to one of the faculty members or to some other responsible person and every reasonable effort should be made to carry on the essential functions of the library. Where permission, to place responsibility for the library in the hands of a person with limited experience in law library work, is granted, it may be advisable to call attention to the fact that the Joint Committee will be glad to render assistance either by supplying such specific information as may be required or by putting the inquirer in touch with the appropriate source of such information.

Respectfully submitted,

JEAN ASHMAN
ARTHUR S. BEARDSLEY
ALICE DASPIT
FORREST DRUMMOND
MARIAN GOULD
BERNITA J. LONG
LEWIS W. MORSE
ALFRED MORRISON
HELEN NEWMAN
LAYTON B. REGISTER
HENRY E. SPRINGMEYER
WILLIAM R. ROALFE, *Chairman*

REVIEWS OF REFERENCE TOOLS

FEDERAL ADMINISTRATIVE PROCEDURE SERVICE. A GUIDE TO THE FEDERAL GOVERNMENT. *Commerce Clearing House, Chicago, 1941. Loose Leaf. $35.00 yrly.*

ADMINISTRATIVE LAW SERVICE. REPORTER—SERVICE—TEXT. *By James A. Pike and Henry G. Fischer. Matthew Bender and Company, Albany, 1941. Loose Leaf. $45.00 yrly.*

Administrative Law has been functioning in our federal government for decades in such well established agencies as the Patent Office and the Interstate Commerce Commission. The field, however, has become so staggering and shifting in the last few years that those engaged in research and practice have been urging some coordination of information. Rules, regulations and decisions have been appearing in miscellaneous forms in pamphlets, mimeographed sheets and in bound volumes. Many have not been published at all.

There has arisen, therefore, a need for a cumulative, accurate, up-to-the-minute presentation of such material. It was with the idea of meeting this need that two loose leaf services recently have been made available. One is the Commerce Clearing House, Federal Administrative Procedure Service. The other, published by Matthew Bender and Company, called Administrative Law, Reporter—text—service, is edited by James A. Pike and Henry G. Fischer.

These two new publications complement, rather than duplicate each other and together make an invaluable combination for the lawyer or library dealing in Administrative Law. Both of them cover the procedural side of this field.

Commerce Clearing House has brought together all of the regulations on practice and procedure before federal departments and agencies and has combined them with data on the history, jurisdiction, organization, location and personnel. These are arranged according to the division of government, by a vertical approach.

This has been done to a remarkable degree, including information on such agencies of quasi-governmental nature as the National Academy of Sciences and the National Research Council, and agencies where no hearing officer is necessary as the Battle Monuments Commission. Its greatest contribution is the presentation of the regulations. Use of this set saves the uncertainty that there may be something more recent than the Code of Federal Regulations and makes it unnecessary to consult the various indexes of the Federal Register for matters of administrative procedure. It obviates the necessity of continually writing to Washington for the latest regulations.

A valuable feature is the Personnel Directory of the various federal agencies.

The Pike and Fischer service employs the horizontal treatment, working by subject rather than department. Approach to the material in this service is by a "Guide", a "Word Index" and an "Agency Table" as well as by tables of decisions, texts and articles. The "Guide" is a thorough and ingenious

classification or table of contents of the service. The broad headings used are Administrative Process in General; President; Defense Administration; Agencies, Rule Making and Investigation; Adjudications; Judicial Review in General; Statutory Review; Non-Statutory Review, Collateral Attack; and Enforcement. Each one of these topics is broken down into subtopics by a thorough system of digits and decimals. And each main topic is introduced by a short discussion of its particular scope. The preparation of this "Guide" must have been a tremendous editorial undertaking.

To be used in conjunction with the "Guide" are the "Word Index" and "Agency Table". The latter two unfortunately give the impression that the service does not include all of the material which actually is presented. For instance, the service includes decisions and material on the Bureau of Internal Revenue. Yet, these two sections do not list this Bureau nor the subject of Internal Revenue. They may be reached through use of the "Guide", however. Certain of the material would be more readily available if the "Word Index" were more detailed, even bowing to the inclusion of some of the substantive aspects of articles and decisions presented, and the "Agency Table" actually listed all of the agencies covered.

The Pike and Fischer service is in reality a combination textbook and casebook presented in loose leaf form. Emphasizing the decisions which have been handed down in administrative procedural matters, the service provides a thorough "Background Digest" which consists of judicial opinions up to January 1, 1941. Full text reports of court and administrative decisions after that date are included in the second volume which is devoted to and entitled "Decisions".

Not to be overlooked is the section reprinting articles and reports which have appeared in the law reviews, and the digest of the "Report of the Attorney General's Committee on Administrative Procedure" to about a third its original running. A recent addition is on "War Agency Material" and correlates data relating to administrative procedure as it particularly relates to agencies directly engaged in prosecution of the war.

In the "Current Text" the editors present a discussion of various phases of Administrative Law, bringing it up to date at least every two weeks. It is to be hoped that this section will continue to expand so as to include even more of the topics covered by the service in general.

Anyone who is confronted with the task of filing the current leaves in loose leaf services will be glad to note the automatic pressure device by which it is possible to remove and replace the top cover merely by lifting a ring. The pages cannot tear out.

It would seem that the two new services will perform a real function toward uniformity in terminology and procedure in Administrative Law. It might be argued that each agency and department has its own peculiar problems and that uniformity would be highly impractical. Yet, general rules and principles have been evolved in the Rules of Civil Procedure for U. S. District Courts, each circuit making adaptations and additions to meet local needs. Certainly one agency will be more able to benefit from the procedural experience of others

because of the excellent coordination done in these two services.

Both the Commerce Clearing House Service and the Pike and Fischer Service are ably edited and will become increasingly indispensable as the field of Administrative Law expands.

MARGARET E. HALL.

Columbia University Law Library.

TENTATIVE PROGRAM OF THE 37th ANNUAL MEETING

of the

AMERICAN ASSOCIATION OF LAW LIBRARIES

PFISTER HOTEL, MILWAUKEE, WISCONSIN

JUNE 22-24, 1942

Monday, June 22nd

10:00 A.M.—President Sidney B. Hill, presiding.

Address of Welcome: Mr. Paul R. Newcomb, President-Elect of the Milwaukee Bar Association.

Response: President-Elect Bernita J. Long, Law Librarian, University of Illinois.

Report of the President: Sidney B. Hill, Assistant Librarian, Association of the Bar of the City of New York.

Report of Executive-Secretary & Treasurer: Helen Newman, Law Librarian, The George Washington University.

Report of Committee on Law Library Journal: Chairman Frederick Rothman, Law Librarian, New York University.

Report of Committee on Index to Legal Periodicals: Chairman Franklin O. Poole, Librarian, Association of the Bar of the City of New York.

2:30 P.M.—Joint Session National Association of State Libraries and American Association of Law Libraries: Dennis A. Dooley, Librarian, Massachusetts State Library, presiding.

Panel Discussion on Acquisition and Cataloging of Administrative Law Materials: Miles O. Price, Law Librarian, Columbia University, Leader of Discussion.

Inter-Library Loans and New Methods of Conducting Library Exchanges: Alfred D. Keator, Director, State Library and Museum, Harrisburg, Pa., Leader of Discussion.

Tuesday, June 23rd

10:00 A.M.—President Sidney B. Hill, presiding.

Cooperation Between Special Libraries and Law Libraries: Miss Laura Woodward, President of Special Libraries Association.

Wisconsin Statutory Materials: Philip Marshall, Law Librarian, University of Wisconsin.

Reports of Committees.

Report of the Nominating Committee.

Report of the President of the Carolina Law Library Association.

Petition for a Chapter: Law Librarians' Society of Washington, D. C.

2:00 P.M.—President-Elect Bernita J. Long, presiding.
Report of Committee on Cooperation with County Law Libraries: Chairman Susan M. Drew, Librarian, Milwaukee County Law Library.
Development of County Law Libraries: (Speakers to be announced.)

7:00 P.M.—Joint Banquet National Association of State Libraries and American Association of Law Libraries: Oscar C. Orman, Director of Libraries, Washington University, Toastmaster.
Greetings: Dennis A. Dooley, President, National Association of State Libraries.
Greetings: Sidney B. Hill, President, American Association of Law Libraries.
Speakers: William Doll, Past-President of the State Bar Association of Wisconsin.
Justice E. T. Fairchild, Wisconsin Supreme Court.

Wednesday, June 24th

10:00 A.M.—Panel Discussion on the Index to Legal Periodicals: Helen Ross, Librarian, Duluth Bar Library Association, presiding.
Panel Discussion on Book Selection: William R. Roalfe, Law Librarian, Duke University, presiding.

2:30 P.M.—President Sidney B. Hill, presiding.
Address: Charles Brown, President, American Library Association.
Unfinished Business.
Election of Officers.

Headquarters at Pfister Hotel

Members are urged to make their room reservations direct with Mr. Ray Smith, President of the Pfister Hotel, as soon as possible. The rates are $2.50 and up with bath.

Committee on Arrangements

Gilson G. Glasier, State Librarian of Wisconsin, Madison, Wisconsin, is the Chairman of the Committee on Arrangements for the Annual Meeting. Other members of the Committee are: Miss Susan M. Drew, Milwaukee County Law Library, William S. Johnston, Chicago Law Institute, and Philip G. Marshall, University of Wisconsin.

CHECK LIST OF CURRENT AMERICAN STATE REPORTS, STATUTES[1] AND SESSION LAWS

Revised to March 15, 1942

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
		ALABAMA	
Reports	. . .	West Pub. Co.	241
App. Reports	. . .	West Pub. Co.	29
Session laws	Quadrennial	Secretary of State	1939 Reg. & Ex.
Code, Compilation or Revision		Secretary of State	1940 Code A. 10v. with 1941 P. P.
		ALASKA	
Reports	. . .	West Pub. Co.	9
Session laws	Odd years	Secretary of Territory	1941
Code, Compilation or Revision		Auditor of Alaska, Juneau	Comp. L. 1933 1v.
		ARIZONA	
Reports	. . .	Bancroft, Whitney & Co.	56
Session laws	Odd years	Secretary of State	**Reg. 1941, 1st Spec. 1940** 1 vol.
Code, Compilation or Revision		Bobbs-Merrill Co.	1939 Code A. 6v. with 1941 P. P.
		ARKANSAS	
Reports	. . .	Secretary of State	201
Session laws	Odd years	Secretary of State	Reg. 1941, Ex. 1940
Code, Compilation or Revision		Department of State, Little Rock	Pope's Digest 1937 A. 2v.
		Thomas Law Book Co.	1940 Cum. A. Supp.
		CALIFORNIA	
Reports	. . .	Bancroft-Whitney & Co.	17 (2d)
App. Reports	. . .	Bancroft-Whitney & Co.	45 (2d)
Advance Parts	. . .	Recorder Prtg. & Pub. Co.	Weekly
California Decisions	. . .		3
*Advance Parts	. . .	Recorder Prtg. & Pub. Co.	
Session laws	Odd years	Secretary of State	1941, incl. 1940 Extra Session.
Code, Compilation or Revision		Bancroft-Whitney & Co.	
		1941 Deering Civil Code 1v.	1937 Deering General Laws 2v.
		1941 Deering Civil Procedure & Probate Code 1v.	1937 Deering Constitution 1v.
		1941 Deering Penal Code 1v.	1939 Supp. to Codes & General Laws 1v.
		1937 Deering Political Code 1v.	1941 Supp. to Constitution, Codes & General Laws 1v.
		1937 Deering Commissioners' Code, 3v.	

[1] In response to suggestions from members of the A.A.L.L., the Editor has revised this Check List to include Statutory Compilations. Because of space limitations only one is listed for each state with the official set listed in preference to unofficial sets. The Editor will be glad to receive additional suggestions from members and subscribers concerning these statutory listings.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
CANAL ZONE			
Reports	. . .	Executive Secretary, Panama Canal, Balboa Heights, C. Z.	3
Code, Compilation or Revision		Superintendent of Documents, Washington, D. C.	1934 Code A. 1v.
		The Chief of Office, The Panama Canal, Washington	Supp. No. 1, 1938 Supp. No. 2, 1941
COLORADO			
Reports	. . .	A. B. Hirshfield Press, Denver, Colo.	107
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Michie Co.	1935 Stat. 5v. 1941 Replacement v1. with 1941 P. P.
CONNECTICUT			
Reports	. . .	E. E. Dissell & Co., Hartford, Conn.	127
*Advance Parts	. . .	E. E. Dissell & Co., Hartford, Conn.	
Conn. Supp.	. . .	Connecticut Law Journal Pub. Co.	Vol. 8
Superior Ct. Rep.	. . .	Bridgeport, Conn.	
Common Pleas Rep.	. . .	(Selected cases by Judges)	
*Conn. Law Journal	. . .	Weekly continuations	
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		E. E. Dissell & Co., Hartford, Conn.	1930 Gen. Stat. 3v. 1931-33-35 Cum. Supp. 1v. 1937-39 Cum. Supp. 1v. 1941 Supp. 1v.
DELAWARE			
Reports	. . .	State Librarian	40
Chancery reports	. . .	State Librarian	21
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		Delaware State Library, Dover, Del.	1935 Code 1v.
DISTRICT OF COLUMBIA			
Appeals	. . .	West Pub. Co.	73
Acts Affecting District of Columbia	. . .	John Byrne & Co.	41
Code, Compilation or Revision		Government Printing Office, Washington, D. C.	1940 Code A. 2v.
FLORIDA			
Reports	. . .	E. O. Painter Ptg. Co., De Land	145
Session laws	Odd years	Secretary of State	1941 General
Code, Compilation or Revision		Harrison Co., Atlanta, Ga.	1941 Gen. L. 1v.
GEORGIA			
Reports	. . .	The Harrison Co.	192
App. Reports	. . .	The Harrison Co.	65
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		The Harrison Co.	1933 Code 1v.
HAWAII			
Reports	. . .	Clerk of Supreme Court	34
*Advance parts	. . .	Clerk of Supreme Court	
Session laws	Odd years	Secretary of Territory	1941
Code, Compilation or Revision		Secretary of Territory	1935 L. 1v.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
		IDAHO	
Reports	. . .	Bancroft, Whitney & Co.	61
Session laws	Odd years	Capital News Pub. Co.	Reg. 1941
Code, Compilation or Revision		Bobbs-Merrill Co.	1932 Code 4v.
		Courtright Pub. Co., Denver	1940 Supp. 1v.
		ILLINOIS	
Reports	. . .	Samuel P. Irwin, Bloomington	377
*Advance parts	. . .	Samuel P. Irwin, Bloomington	
App. Reports	. . .	Callaghan & Co.	310
*Advance parts	. . .	Callaghan & Co.	
Court of Claims Reports	. . .	State Printer	10
Session laws	Odd years	Secretary of State	1941 Vols. 1 & 2
Code, Compilation or Revision		The Burdette Smith Co.	1941 Stat. 1v. State Bar Ed.
		INDIANA	
Reports	. . .	Secretary of State	217
App. Reports	. . .	Secretary of State	108
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Banks-Baldwin Law Pub. Co.	1934 Baldwin's Stat. A. 1v.
		Bobbs-Merrill Co.	1933 Burn's Stat. A. 12v. 1941 P. P.
		IOWA	
Reports	. . .	Superintendent of Printing	229
Session laws	Odd years	Superintendent of Printing	Reg. 1941
Code, Compilation or Revision		Superintendent of Printing	1939 Code 1v.
		KANSAS	
Reports	. . .	State Librarian	153
*Advance parts	. . .	State Librarian	
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Secretary of State	1935 Gen. Stat. A. 1v. 1941 Supp. 1v.
		KENTUCKY	
Reports	. . .	State Librarian	284
*Advance parts	. . .	State Librarian	
Session laws	Even years	State Librarian	Reg. 1940
Code, Compilation or Revision		Banks-Baldwin Law Pub. Co.	1936 Carroll's Stat. A. 1v.
		LOUISIANA	
Reports	. . .	West Pub. Co.	197
Session laws	Even years	Secretary of State	Extra & Reg. 1940
Code, Compilation or Revision		Bobbs-Merrill Co.	1939 Gen. Stat. 6v. with 1941 P. P.
		MAINE	
Reports	. . .	Southward Anthoenson Press, Portland	136
Session laws	Odd years	Book Dealers in Portland and Bangor	Reg. 1941, incl. 1940 Spec. Sess.; 1942 Spec. Sess.
Code, Compilation or Revision		Department of State	1930 Stat. 1v.
		MARYLAND	
Reports	. . .	Century Printing Co., Baltimore	178
*Advance parts	. . .	Century Printing Co., Baltimore	
Baltimore City Reports	. . .		4v. (1919-1928)
Session laws	Odd years	State Librarian	Reg. 1941
Code, Compilation or Revision		Dept. of Leg. Ref., Baltimore	1939 Code A. 2v.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
MASSACHUSETTS			
Reports	. . .	Wright & Potter Ptg. Co., Boston	308
Advance parts	. . .	Wright & Potter Ptg. Co., Boston	
App. Div. Reports	. . .	Lawyers' Brief & Pub. Co., Boston	6
Session laws	Odd years	Secretary of the Commonwealth	Reg. 1939
Code, Compilation or Revision		Department of Secretary	1932 Gen. L. 3v.
MICHIGAN			
Reports	. . .	Callaghan & Co.	295
*Advance parts	. . .	Callaghan & Co.	
Session laws	Odd years	Secretary of State	1939
Code, Compilation or Revision		Secretary of State	1929 Com. L. 4v.
		Mason Pub. Co.	1940 Cum. Supp. A. 1v.
		Mason Pub. Co.	1941 Supp. 1v.
MINNESOTA			
Reports	. . .	Johnson Pub. Co., St. Paul	209
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Mason Pub. Co.	1927 Stat. A. 2v. 1940 Cum. Supp. A. 1v. 1941 Supp. A. 1v.
MISSISSIPPI			
Reports	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	190
Session laws	Even years	Secretary of State	Reg. 1940 Local & Priv. 1940
Code, Compilation or Revision		Harrison Company	1930 Code A. 2v. 1938 Cum. Supp. 1v
MISSOURI			
Reports	. . .	E. W. Stephens Pub. Co., Columbia	347
App. Reports	. . .	E. W. Stephens Pub. Co., Columbia	234
Session laws	Odd years	Secretary of State	Extra 1940, 1941
Code, Compilation or Revision		Secretary of State	1939 Rev. Stat. 3v. Supp. 1941
MONTANA			
Reports	. . .	Bancroft, Whitney & Co.	111
Session laws	Odd years	State Publishing Co., Helena	Reg. 1941
Code, Compilation or Revision		State Publishing Co., Helena	1935 Code A. 5v.
		Courtright Pub. Co.	1939 Supp. A. 1v.
NEBRASKA			
Reports	. . .	State Librarian	139
Session laws	Odd years	State Librarian	1941
Code, Compilation or Revision		Department of State	1929 Com. Stat. A. 1v.
		Supplement Printing Co., Lincoln	1941 Supp. 1v.
NEVADA			
Reports	. . .	Secretary of State	60
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Bender-Moss Co., San Francisco	1929 Com. L. A. 6v. with 1930-37 P. P.
NEW HAMPSHIRE			
Reports	. . .	C. D. Hening, Lancaster, N. H., Reporter	90
*Advance parts	. . .	C. D. Hening, Lancaster, N. H.	
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Secretary of State	1926 Pub. L. 2v.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
NEW JERSEY			
Law Reports	. . .	Soney & Sage Co.	125
Equity Reports	. . .	Soney & Sage Co.	129
Miscellaneous Reports	. . .	Soney & Sage Co.	19
Advance parts covering above	. . .	Soney & Sage Co.	
Session laws	Annual	Secretary of State	1940
Code, Compilation or Revision		Department of State	1937 Rev. Stat. 5v.
		Soney & Sage, West	1938-39-40 Cum. Supp. 1v.; 1941 Cum. Supp. 1v.
NEW MEXICO			
Reports	. . .	West Pub. Co.	45
Session laws	Odd years	Secretary of State	Spec. 1940, Reg. 1941
†Code, Compilation or Revision		Courtright Pub. Co.	1929 Stat. A. 1v. 1938 Supp. A. 1v.
NEW YORK			
Reports	. . .	Williams Press, Inc., Albany	285
App. Div. Reports	. . .	Williams Press, Inc.	261
N. Y. Miscellaneous	. . .	Williams Press, Inc.	175
*Advance parts covering all the above	. . .	Williams Press, Inc.	
State Department Reports	. . .	Publishers Ptg. Co., 207 W. 25th St., N. Y. City**	61
N. Y. State Labor Relations Board decisions	. . .	N. Y. Industrial Commissioner, 80 Centre St., N. Y. C.	2
N. Y. Supplement	. . .	West Pub. Co.	30(2d)
*Advance parts	. . .	West Pub. Co.	32(2d)
Session laws	Annual	Williams Press, Inc.	1941
Code, Compilation or Revision		Edward Thompson Co.	1939 Laws 5v. 1941 Supp. 1v.
NORTH CAROLINA			
Reports	. . .	Secretary of State	219
*Advance parts	. . .	Secretary of State	
Session laws	Odd years	Secretary of State	1941 Public Laws 1941 Pub.-Loc. & Priv.
Code, Compilation or Revision		The Michie Co.	1939 Code A. 1v. 1941 Supp. 1v.
NORTH DAKOTA			
Reports	. . .	Lawyers Co-op. Pub. Co.	70
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Lawyers Cooperative	1913 Com. L. A. 2v. 1925 Supp. A. 1v.
OHIO			
Reports	. . .	The F. J. Heer Printing Co., Columbus	138
App. Reports	. . .	The F. J. Heer Printing Co., Columbus	66
*Advance Reports	. . .	Ohio State Bar Ass'n, Columbus	
Ohio Opinions	. . .	W. H. Anderson Co., Cincinnati	20
*Advance Reports	. . .	Ohio Law Rep. Co., Cincinnati	
Ohio Supp.	. . .	West Pub. Co.	5
*Advance Reports	. . .	West Pub. Co.	
Session laws	Odd years	Secretary of State	Reg. 1939, Ex. 1940
Code, Compilation or Revision		Banks-Baldwin Law Pub. Co.	1940 Throckmorton's Code A. 1v.
OKLAHOMA			
Reports	. . .	Times Jour. Pub. Co., Oklahoma City	188

* Advance parts paged to correspond with permanent edition.
** Orders must be placed with N. Y. State Division of the Budget, Albany, N. Y.
† 1942 Official Stat. ready in fall of 1942: Bobbs-Merrill.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
OKLAHOMA—Continued			
Criminal Reports	. . .	Cooperative Pub. Co., Guthrie, Okla.	70
Session laws	Odd years	Cooperative Pub. Co., Guthrie, Okla.	1941
Code, Compilation or Revision		West Pub. Co.	1941 Official Stat. 1v.
OREGON			
Reports	. . .	Bancroft, Whitney & Co.	164
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Bancroft, Whitney & Co.	1940 Com. L. A. 10v. with 1941 P. P.
PENNSYLVANIA			
State Reports	. . .	Geo. T. Bisel & Co., Philadelphia	340
Superior Ct. Reports	. . .	Geo. T. Bisel & Co., Philadelphia	142
District and County Reports	. . .	Legal Intelligencer, Philadelphia	40
Advance parts of all the above	. . .	Legal Intelligencer, Philadelphia	
Session laws	Odd years	Bureau of Publication	1941 Reg., Spec. Sess. 1940
Code, Compilation or Revision		West Pub. Co.	1936 Purdon's Stat. 1v.
PHILIPPINES			
Reports	. . .	Bureau Insular Affairs, Washington	63
Commonwealth Statutes	. . .	Dept. of Interior	1935-37 Vol. 1 1935 Penal Code 3v. 1936 Supp. 1v.
Code, Compilation or Revision		Lawyers Coop. Pub. Co.	1925 Code of Civil Proc. 1v.
PUERTO RICO			
Reports	. . .	Dept. of Interior, Washington	50
Advance parts	. . .	Secretary-Reporter, San Juan	
Session laws	Annual	Dept. of Interior, Washington	1941
Code, Compilation or Revision		Dept. of Interior	1930 Civil Code
RHODE ISLAND			
Reports	. . .	State Librarian	63
Superior Ct. Decisions	. . .	Pub. by R. I. Law Record, Providence	12
Acts and Resolves	Annual	State Librarian	1941
Public laws	Annual	State Librarian	1941
Code, Compilation or Revision		Secretary of State	1938 Gen. L. A. 2v. 1941 Pub. L. 1v.
SOUTH CAROLINA			
Reports	. . .	R. L. Bryan, Columbia	195
*Advance parts	. . .	R. L. Bryan, Columbia	
Session laws	Annual	State Library	1941
Code, Compilation or Revision		Michie Co.	1932 Code A. 4v.
		R. L. Bryan Co.	1934 Supp. 1v. 1936 Supp. 1v. 1938 Supp. 1v.
SOUTH DAKOTA			
Reports	. . .	State Pub. Co., Pierre	66
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Secretary of State	1939 Code A. 4v.

* Advance parts paged to correspond with permanent edition.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
TENNESSEE			
Reports	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	177
Court of Appeals	. . .	E. W. Stephens Pub. Co., Columbia, Mo.	24
Session laws	Odd years	Printing Dept., Tenn. Industrial School, Nashville	1941 (Private) and 1941 (Public)
Code, Compilation or Revision		Michie Co.	1938 Code A. 1v. 1939-40 and 1941 pamphlet supp.
TEXAS			
Reports	. . .	Hicks-Gastom Co., Dallas	136
Criminal Reports	. . .	Hicks-Gastom Co., Dallas	141
Session laws	Odd years	Secretary of State	1941
Code, Compilation or Revision		Vernon Law Book Co.	1936 Stat. 1v. 1939 Cum. Supp. 1v.
UNITED STATES			
Reports, Official	. . .	Government Printing Office	312
*Advance parts	. . .	Government Printing Office	313
Reports L. Ed.	. . .	Lawyers Co-op. Pub. Co.	85
Advance parts	. . .	Lawyers Co-op. Pub. Co.	86
Sup. Ct. Rep.	. . .	West Pub. Co.	61
*Advance parts	. . .	West Pub. Co.	62
Att'y. Gen. Opinions	. . .	Government Printing Office	39
*Advance parts	. . .	Government Printing Office	40
Aviation reports	. . .	U. S. Aviation Reports, Inc., Baltimore	1941
Court of Claims	. . .	Government Printing Office	93
Comptroller Gen. Dec.	. . .	Government Printing Office	20
*Advance parts	. . .	Government Printing Office	21
Customs Court Reports	. . .	Government Printing Office	6
Customs and Patent Appeals: Customs	. . .	Government Printing Office	28
(same): Patents	. . .	Government Printing Office	28
Fed. Anti-Trust Dec.	. . .	Government Printing Office	12
Fed. Com. Com. Rep.	. . .	Government Printing Office	6
Fed. Power Com. Rep.	. . .	Government Printing Office	1
Federal Reporter	. . .	West Pub. Co.	122 (2d)
*Advance parts	. . .	West Pub. Co.	125 (2d)
Federal Supp.	. . .	West Pub. Co.	41
*Advance parts	. . .	West Pub. Co.	42
Fed. Trade Com. Dec.	. . .	Government Printing Office	32
I. C. C. Rep.	. . .	Government Printing Office	244
I. C. C. Motor Carrier Dec.	. . .	Government Printing Office	28, & 36
I. C. C. Valuation Rep.	. . .	Government Printing Office	48
Interior Dept., Decisions	. . .	Government Printing Office	56
Natl. Labor Rel. Bd. Decisions and Orders	. . .	Government Printing Office	26
†Advance parts	. . .	Government Printing Office	27
Patents, Dec. of Com. of	. . .	Government Printing Office	1940
Puerto Rico Federal	. . .	Lawyers Co-op. Pub. Co.	13
Sec. and Ex. Com. Dec.	. . .	Government Printing Office	7
*Advance parts	. . .	Government Printing Office	7 Part 2
Sec. and Ex. Com. Judicial Dec.	. . .	Government Printing Office	1
Statutes at Large	. . .	Government Printing Office	54 Part 2

* Advance parts paged to correspond with permanent edition.

† To be discontinued with number 227 of vol. 35.

Publication	Dates of Regular Sessions	Source	Latest Vol. to Appear
UNITED STATES—(Continued)			
Tax Appeals, Board of . . .		Government Printing Office	43
Advance parts . . .		Government Printing Office	46
Treasury Decisions . . .		Government Printing Office	75
*Advance parts . . .		Government Printing Office	77
Treas. Dec. (Int. Rev.) . . .		Government Printing Office	35
Code, Compilation or Revision		Government Printing Office	1940 Code 4v.
UTAH			
Reports . . .		Arrow Press	99
Session laws	Odd years	Inland Ptg. Co., Kaysville	Reg. 1941 1st & 2nd Spec. 1941
Code, Compilation or Revision		Inland Printing Co., Kaysville, Utah	1933 Stat. A. 1v.
		Courtright Pub. Co.	1939 Supp. A. 1v.
VERMONT			
Reports . . .		State Librarian	111
Session laws	Odd years	State Librarian	Reg. 1941, Spec. 1940-1941
Code, Compilation or Revision		Vermont State Library	1933 Pub. L. 1v.
VIRGINIA			
Reports . . .		Secretary of Commonwealth	177
Session laws	Even years	Secretary of Commonwealth	1940
Code, Compilation or Revision		Michie Co.	1936 Code A. 1v.
		Michie Co.	1940 Cum. Supp. A 1v.
WASHINGTON			
Reports . . .		Bancroft, Whitney & Co.	9 (2d)
Advance parts . . .		Bancroft, Whitney & Co.	
Session laws	Odd years	State Law Librarian	1941
Code, Compilation or Revision		Frank Pierce, Seattle	1939 Code A. 2v.
WEST VIRGINIA			
Reports . . .		Secretary of State	121
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Michie Company	1937 Code A. 1v.
		Michie Company	1941 Cum. Supp. A. 1v.
WISCONSIN			
Reports . . .		Callaghan & Co.	237
Session laws	Odd years	State Bur. of Purchase, Madison	1941
Biennial compilation by the State Reviser . . .		State Bur. of Purchase, Madison	1941
Code, Compilation or Revision		Bureau of Purchases, Madison	1941 Stat. 1v.
WYOMING			
Reports . . .		Prairie Pub. Co., Casper	56
Session laws	Odd years	Secretary of State	Reg. 1941
Code, Compilation or Revision		Secretary of State	1931 Stat. 1v.
		Secretary of State	1940 Cum. Supp. 1v.

* Advance parts paged to correspond with permanent edition.

CHECK LIST OF NATIONAL REPORTER SYSTEM

Revised to March 15, 1942

	Last Vol. to Appear
Atlantic Reporter, Second Series	22
Advance Sheets	24
Federal Reporter, Second Series	122
Advance Sheets	125
Federal Rules Decisions	1
Advance Sheets	2
Federal Supplement	41
Advance Sheets	42
New York Supplement Reporter, Second Series	30
Advance Sheets	32
North Eastern Reporter, Second Series	37
Advance Sheets	39
North Western Reporter	300
Advance Sheets	2(2d)
Pacific Reporter, Second Series	119
Advance Sheets	122
South Eastern Reporter, Second Series	17
Advance Sheets	18
Southern Reporter, Second Series	4
Advance Sheets	6
South Western Reporter, Second Series	156
Advance Sheets	158
Supreme Court Reporter	61
Advance Sheets	62

EXCHANGES

Space on this page is offered free of charge to regular and institutional members of the A.A.L.L. who are invited to send to the Editor listings of their "Wants" and "Duplicates" for Exchange.

WANTED by Arie Poldervaart, Librarian, New Mexico Law Library, Santa Fe, New Mexico: 1918 New Mexico Bar Report, 32 annual sess. 80p.; 1868-69 New Mexico Session Laws, English, 18th ass'y, 112 & 29p.

WANTED by Wanda Miller, Librarian, General Counsel's Office U. S. Treasury: Catalogue of the Library of the Harvard Law School, 1909, 2v.

SCHEDULE OF ADVERTISING RATES

The following is the schedule of advertising rates for the LAW LIBRARY JOURNAL per issue. Six numbers are published each year.

Page		PER ISSUE
A	Front cover—inside. Advertisement: whole page only.....	$50.00
B	Page opposite Front inside cover: Table of Contents.	
C	Back of Table of Contents. Advertisement: whole page.....	40.00
	half page.....	25.00
D	Advertisements: whole page	40.00
	half page	25.00
	quarter page	15.00
E	Exchanges. Free listings for regular members of A.A.L.L.	
F	Back cover—inside. Advertisement: whole page only.....	50.00
G	Back cover—outside. Advertisement: whole page only.....	50.00

10 per cent discount on yearly contracts.

All correspondence concerning advertising should be addressed to Joseph Andrews, Associate Editor and Advertising Manager of the LAW LIBRARY JOURNAL, Association of the Bar of the City of New York, 42 West 44th Street, New York City. Advertising copy should be sent in time to reach Mr. Andrews by the 1st of each month in which the Journal is issued, namely, January, March, May, July, September and November.